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**Organized crime and judicial corruption democratic transformation and prospects for justice in the western Balkans  
a case study of Albania**

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**Author:** Fabian Zhilla

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**ORGANIZED CRIME AND JUDICIAL CORRUPTION  
DEMOCRATIC TRANSFORMATION AND PROSPECTS  
FOR JUSTICE IN THE WESTERN BALKANS  
A CASE STUDY OF ALBANIA**

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**This thesis is submitted in fulfilment of the  
requirements of the award of Doctor of Philosophy**

**June 2012**

# ABSTRACT

Judicial corruption and organised crime are the main factors which have undermined the democratisation process and the strengthening of the rule of law in the Western Balkans. Organised crime and corruption are so entrenched that they have been cited as two key obstacles to the admission of Albania to European Union membership in 2011. In Albania, as in many Western Balkans countries, the democratic transition of the early 1990s has encountered many problems as institutional transformation has been put into practice. While many people envisioned a new democratic regime and retrospective justice for the excesses of prior community officials, many former members of the politburo retain key positions in the economy and politics today. They do so in a context where organised crime and judicial corruption flourish. Albania scores poorer than any other country in the Western Balkans on judicial corruption.

Despite the massive consequences of judicial corruption and organised crime for post-communist societies, research on their nexus is rare. The literature is limited for the most part just to describing general patterns and consequences of the phenomenon (Van Dijk 2007; Buscaglia and van Dijk 2003). The academic discourse does little to explore the causes of judicial corruption and its links to organised crime (Buscaglia and van Dijk 2003; Della Porta 2001; Ruggiero 2000; Della Porta and Vannucci 1999; Gambeta 1993; Paoli 2003). There are only a few studies on organised crime and corruption in the Western Balkans (Giatzidis 2007; Stojarová 2007; Transcrime 2004; Holmes 2009; Dobovšek 2006; Arsovska 2008; Trimcev 2002).

Within this narrow context, this thesis explores the interplay of judicial corruption and organised crime in the Western Balkans with the case study of Albania. This research is socio-legal in its nature and looks at both social and institutional aspects of the phenomenon. The framework adopted combines qualitative and quantitative methods. It included 61 semi-structured interviews; the observation of court proceedings in urban and rural courts for 14 days; archival research of 31 files and secondary data analysis of judicial corruption during the modern period of the Albanian state (1912-2011); as well as the review of several international and local reports on corruption and crime in Albania.

This thesis argues that in post-communist societies there are different categories of judges who struggle for power. A high level of judicial corruption favours corrupt judges over honest ones and this also influences social disparity among different categories of judges inside the judiciary. This class division might create an internal conflict between judges and erode the efficiency of the judiciary. It is also argued that if the social status of judges is low, then judges may develop their own subculture and claim a higher status in society. This may push judges to deviance.

The rise of corruption in the judiciary weakens the violent patterns of organised crime to influence the judiciary. This strengthens the role of bribes in corrupting judges. As a result, an

ongoing 'clientelist' relationship between organised crime and judicial corruption is more likely. Sophisticated organised crime groups tend to establish permanent relations with judicial corruption, whereas less developed organised crime prefers sporadic contacts. Judicial corruption opens opportunities for powerful elites and organised crime to gain by influencing the judiciary. It helps corrupt judges to get promoted because they have the financial means.

Contrary to the limited existing literature, customary norms such as 'Krahinizem' (regionalism) and 'Kanun' (codified customary norms) do not play as significant a role in the corruption of modern urban courts as previously expected. 'Clientelistic' family relationships exert a kind of asymmetrical relationship with judicial corruption – sometimes they may promote particularism but family honour on the part of judges may also work to prevent it. It is also noted that blood feud continues to play a significant role in shaping the incentive of judges for corruption and also the motivation of organised crime for recruitment in the hinterland.

A distinctive finding of this research is that in societies where there is successive disruption of the judicial systems through political transition and lack of consolidated democratic legal culture, judicial corruption is more likely.

This study brings some important contributions to the literature of corruption and crime in post-communist societies. Methodologically, this thesis is the only work that draws on legal history, criminology, jurisprudence and public law for the analysis of the links between judicial corruption and organised crime.

And finally, this research is among very few works that attempt to theorise empirically judicial corruption in the context of organised crime in post-communist societies. From the criminological aspect, this study for the first time draws attention to the subculture of judges and shows some deviant patterns of judges justifying their corrupt behaviour.

# ACKNOWLEDGEMENTS

The inspiration for this research originates from my concerns as an Albanian lawyer who was brought up with the troubles of judicial corruption and crime that occurred during the transition period from communism to democracy. Like many youngsters of my age, I felt I was living in a limbo of despair and thought of widespread corruption and crime as an inevitable fate of Albanian society. The idea for this study thus originated from a normative consciousness to change the situation and as a personal responsibility to my country and family.

So my first gratitude goes to God Almighty who gave me the aim, energy and courage to complete this research. I would also like to thank my family members for their contribution to this project: my father, who is not alive today, for his encouragement to complete my studies and contribute to my country; my mother for her timeless psychological and material support all my life and particularly for this project; my brother for his generous intellectual and financial contributions; and finally to my wife and son for understanding my long absence from the family and encouraging me all the time in my endeavour.

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investigative journalist Fatos Mahmutaj who now resides in exile from political prosecution since 2011.

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And finally this research also benefited from the comments of many academics and PhD students while it was presented in prestigious conferences such as the Socio-Legal Studies Association Conference, British Society of Criminology, Symposium on Economic Crime, University of Cambridge, British Association for Slavonic and East European Studies, Annual Criminology Conference, University of Edinburgh, Oxford University, Post-Graduate Student Conference, and Queen Mary PhD Conference.

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# LIST OF ABBREVIATIONS

<b>ABA/CEELI</b>	American Bar Association's Central and Eastern European Law Initiative
<b>BPJC</b>	Bangalore Principles of Judicial Conduct 2002
<b>CLE</b>	Continuing Legal Education
<b>CNA</b>	Court Notification Attendance
<b>CSD</b>	Center for the Study of Democracy
<b>DP</b>	Democratic Party
<b>ECHR</b>	European Court of Human Rights
<b>EU</b>	European Union
<b>EUROPOL</b>	European Police Office
<b>FRIDE</b>	Fundación para las Relaciones Internacionales y el Diálogo Exterior
<b>GPO</b>	General Prosecutor's Office
<b>HCJ</b>	High Council of Justice
<b>HIDAA</b>	High Inspectorate for Declaration and Audit of Assets

<b>IDRA</b>	Institute for Development Research and Alternatives
<b>IMF</b>	International Monetary Fund
<b>MJ</b>	Minister of Justice
<b>MOJ</b>	Ministry of Justice
<b>NAJ</b>	National Association of Judges
<b>NJC</b>	National Judicial Conference
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OSCE</b>	Organisation for Security and Co-operation in Europe
<b>SOM</b>	School of Magistrates
<b>SP</b>	Socialist Party
<b>TI</b>	Transparency International
<b>USAID</b>	United States Agency for International Development
<b>HPOC</b>	High Profile Organised Crime
<b>LPOC</b>	Low Profile Organised Crime

# ORGANISED CRIME AND JUDICIAL CORRUPTION: DEMOCRATIC TRANSFORMATION AND PROSPECTS FOR JUSTICE IN THE WESTERN BALKANS

Corruption, organised crime and money laundering<sup>1</sup> are major obstacles to democratic transition and to justice in Albania. Organised crime in the Western Balkans includes but is not limited to trafficking of persons, drugs and arms; document forgery and identity fraud; and car theft for export rings. Organised crime creates unfavourable conditions for foreign investment and growth while constructing havens for terrorism and perpetuating violent crime (Buscaglia and Van Dijk 2003; Glenny 2008). Judicial corruption and organised crime undermine the centrality of judicial independence to the rule of law and democracy (Van Dijk 2007; Della-Porta 2001; Ruggiero 2000).

One of the biggest concerns regarding the strength of organised crime in the Western Balkans is its success in corrupting the judiciary and law enforcement agencies (Giatzidis 2007; Stojarová 2007). Exploitation of the judiciary by organised crime and consequent subversion of the rule of law are critical obstacles in this region's democratic progression.<sup>2</sup>

There is a rise in significance of organised crime in the Western Balkans with an argued potential threat to the state.<sup>3</sup> This region is considered as a 'soft' security threat to the European Union (EU) as the result of widespread corruption and crime there (Trauner 2009).

---

<sup>1</sup> Money Laundering are becoming a world wide concern and a real threat to political stability in developing countries. See Alexander K., Dhumale R., and Eatwell J. (2006) *Global Governance of Financial Systems: The International Regulation of Systemic Risk*, Oxford: Oxford University Press, p. 31.

<sup>2</sup> See the statement on April 7, 2009 by Enlargement Commissioner Olli Rehn on the second round of the Presidential Elections in the Former Yugoslav Republic of Macedonia emphasising that 'Important work remains in order to deliver results on judicial reform, the fight against corruption and reform of the civil service'; available at [http://ec.europa.eu/commission\\_barroso/rehn/index\\_en.htm](http://ec.europa.eu/commission_barroso/rehn/index_en.htm) [accessed May 12, 2009].

<sup>3</sup> See United Nations Office on Drugs and Crime (2008) 'Crime and its Impact on the Balkans and Affected Countries', March 2008.



Political corruption and judicial corruption are comparatively more prevalent in the Western Balkans than in any other part of Europe<sup>4</sup> and they have also been cited by the EU as among the main barriers to Albania's rejection of the candidate membership status in 2011.<sup>5</sup> Enforcement of state criminal and civil law remains weak and ineffective.<sup>6</sup>

Despite these massive problems and wide-ranging implications, detailed research focusing on these problems remains scarce. Not until 2007 was the first comprehensive report published that addressed judicial corruption as a worldwide concern (by Transparency International – TI). This study focused primarily on developing countries.<sup>7</sup> Even this report, however, is limited to describing patterns (Rose-Ackerman 2007:15; Buscaglia 2007:67) and consequences (Papys 2007:3) of the phenomenon. It does little to explore the causes of judicial corruption (Colombo 2007:107; Kurkchiyan 2007:101).

Subsequent reports by TI show that in the Western Balkans, the judiciary has been ranked as the most corrupt of any sector during the last decade.<sup>8</sup> Judicial corruption has for this reason become a major challenge on the political agenda of almost all governments in the Western Balkans. Pressure from the EU has played a key role in highlighting this priority.<sup>9</sup>

My research analyses the roots of judicial corruption in Albania and the Western Balkans and seeks to explain why reforms are not yielding more concrete results. It also explores the generation and dynamics of judicial corruption and its interplay with organised crime.

What is particularly interesting is that, although criminal gangs have existed in the Western Balkans since the period of independence movements in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, transnational organised crime is relatively new (Dobovšek 2006). This means that

---

<sup>4</sup> According to a Freedom House report in 2008, the West Balkans Corruption Ratings and Judicial Independence were 5.70 and 5.15 on a scale with 1 representing the highest and 7 the lowest; available at <http://www.freedomhouse.org/template.cfm?page=42&year=2008> [accessed January 15, 2009].

<sup>5</sup> See 'European Commission Opinion on Albania's Application for Membership of the European Union' (2010), p.11; available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/al\\_opinion\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_opinion_2010_en.pdf) [accessed March 28, 2012].

<sup>6</sup> See Sherman, J. (2010) 'Criminal Justice: Security and Justice Thematic Paper', *World Development Report 2011*, p.4, November 9; available at [http://www.justpal.org/LinkClick.aspx?fileticket=qt4xBuH6\\_w%3D&tabid=103&mid=449](http://www.justpal.org/LinkClick.aspx?fileticket=qt4xBuH6_w%3D&tabid=103&mid=449) [accessed June 2, 2012].

<sup>7</sup> See chapter 7 of Transparency International's *Global Corruption Report 2007: Corruption in Judicial Systems* (Cambridge: Cambridge University Press).

<sup>8</sup> See Transparency International annual reports: 2004 (p.11), 2005 (pp.14-16), 2006 (pp.19-21) and 2007 (pp.9, 27, 38), where the corruption score for West Balkan countries remains high and the judiciary is one of the most corrupted sectors.

<sup>9</sup> See the EU enlargement strategy plan, whereas key challenging criteria to be fulfilled by Western Balkan countries are mostly related to the fight against corruption and crime. European Commission (2011) 'Enlargement Strategy and Main Challenges 2011-2012', p.4; available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/strategy\\_paper\\_2011\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/strategy_paper_2011_en.pdf) [accessed May 15, 2012].

the life cycle of organised crime and its relationship with the judiciary can be studied within a relatively identifiable and finite period of time.

The main prevailing arguments suggest that corruption and crime may flourish in the judicial system because of the restrained financial conditions of judges and lack of judicial independence (Buscaglia and Dacolias 1999; Buscaglia 2001; Voigt 2007; Rose-Ackerman 2007; Shleiffer and Vishney 1993). The influence of customary norms on the rise of violence and crime in post-communist societies is another factor impacting upon judicial corruption (Arsovska and Verduyn 2008; Grutzpalk 2002).

The literature suggests that in transition societies the weakness of state institutions may also be a significant condition for organised crime to flourish and strengthen. Judicial corruption thus may push people to turn to organised crime and ask for their 'service' to protect and enforce property rights (Habermas 1998; Gambeta 1993; Paoli 2003; Varese 2012).

Within this wider context, I set out to explore the interplay of judicial corruption and organised crime. This research is socio-legal in nature as it looks at both social and institutional aspects of the phenomenon. The focus of my research is upon the position and the discretion of judges in and out of the court structure, including, the constitutional framework and institutional arrangements of judicial independence, patterns in the nature and causes of judges' behaviour and, in particular, social factors in their decision-making in cases before them.

In this first chapter, I define judicial corruption and highlight several definitions key for the research. This chapter also explores the intricate nature of judicial corruption and its complicated interplay with organised crime. In Chapter 2 I explore the literature on the causes of judicial corruption and ask why reforms are not yielding success. In light of the lack of a substantial theoretical discourse on the causes of judicial corruption in the context of organised crime, especially in the Western Balkans, I turn to three theories of corruption and organised crime generally: (1) Economic theory, (2) Social control theory and (3) Democratic legitimisation theory.

My research design, documented in Chapter 3, details a case study that used primarily qualitative methods to create a portrait of judicial corruption and its links with organised crime in Albania. It was based largely on interviews with persons uniquely situated to have special or 'expert' knowledge of the problem. The study also relied on archival research, direct observation of courtroom activity and secondary data analysis.

In Chapters 4 and 5 I describe judicial corruption in Albania and elaborate its landscape. The logic of these chapters is interpretive and the method of interpretation is essentially comparative. From the literature, a standard model of judicial conduct was specified. Then data drawn primarily from fieldwork were used to compare judicial practice in the various Albanian courts to this standard model. Where practice varies among courts (e.g. from urban to rural areas), systematic comparisons were also made to identify patterns of variation among the courts within Albania. In Chapter 4 I elaborate on judicial independence as a key factor in judicial corruption, whereas in Chapter 5 I describe the influence of social context on the behaviour of judges.

Chapter 6 focuses more on organised crime and its consequences for judicial corruption. In this chapter I highlight how the typology of Albanian organised crime has changed over the 20 years during the transition from communism to democracy, 1989-2011. I also highlight the interplay between organised crime and judicial corruption and explain its dynamics during the transition period. Key aspects of the typology of Albanian organised crime are also specified.

Taking stock from the existing literature and drawing on my data, in Chapter 7, I probe new factors for judicial corruption and original scenarios of the interplay between judicial corruption and organised crime. In light of my findings I then return to my research questions and answer them by drawing upon my theoretical framework. My arguments here point to different factors in explaining judicial corruption and its relationship with organised crime.

Chapter 8 concludes, draws together the key findings of my research, the implications for policy and reform, and points to the need for further research.

## Defining Judicial Corruption

To better understand the role of judicial corruption and its consequences in post-communist societies, this section will develop two important notions. It will define judicial corruption – with particular reference to post-communist societies.<sup>10</sup> The research will then compare state exploitation and political corruption (or grand corruption), on one hand, and judicial corruption, on the other.

Judicial corruption will be defined in its broadest terms, including all actors in a court process: judges, prosecutors, lawyers, litigants, clerks, as well as court staff and officials employed by the Ministry of Justice.

As mentioned earlier, TI's definition is based on diverse observations of judicial corruption and is presented in its 2007 report. In that report, it defines corruption as 'the abuse of entrusted power for private gain', extending this concept to cover judicial corruption. It provides a working definition of judicial corruption as 'the inappropriate influence on the impartiality of the judicial process by any actor within the court system' (TI 2007:xxi). However, judicial corruption is an activity with many facets. This definition misses the interconnection with other webs of crime and fails to distinguish between appropriate and 'inappropriate influence'. Papys (2007) explains how complex judicial corruption is and how

---

<sup>10</sup> For a wider picture of the problematic of the judiciary in post-communist courts in Europe and Central Asia see James H. Anderson and Cheryl Gray (2007) *Transforming Judicial Systems in Europe and Central Asia* (Washington, DC: World Bank, 2007); available at <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/AndersonandGrayABCDEFinal.pdf> [accessed March 15, 2010].

carefully it should be observed in order to make clear what is judicial corruption and what is not.

The TI study then explores some patterns of judicial corruption. It points, for example, to 'police tamper[ing] with evidence that supports a criminal indictment, or prosecutors fail[ing] to apply uniform criteria to evidence [facts or proof] generated by the police'. As another example, in states where the judiciary is highly politicised and high-level judges are appointed on political bases, then a constitutional right such as appeal could be undermined. In fact, the politicisation of appointments themselves may be considered as judicial corruption. According to TI, 'Appeals [in such settings may] tend to favour the party with the deepest pockets [and with the strongest political connections]... [This means] that a party with limited resources, but a legitimate complaint, may not be able to pursue their case beyond the first instance' (TI 2007:xxi).

Safeguarding judges from threats and bribes is probably not enough in attempting to uproot judicial corruption. One of the most controversial definitional issues relates to cultural particularities (Colombo 2007:107; Papys 2007:4). Such particularities might constrain judges to hand down biased decisions. In illustrating this argument, Colombo (2007:107) shows how the decision of an Italian magistrate (judge) was affected by high pressure from the Italian public in a case where some key Italian national football players were accused of 'match fixing'. He also implied that the decision of the Italian magistrate could have been affected by the Italian team's win at the 2006 World Football Championship during the same period.

Judicial corruption undermines the primary role of a judge which is to provide parties with a fair decision irrespective of their economic status or political background. In fact, one of the dangerous consequences to society could be the perception it promotes that breaches of the law are unlikely to be punished because there are safe harbours which might mitigate the risk of criminal prosecution such as judicial corruption (Papys 2007:3). A good law is as good as its enforcement and an efficient enforcement of a court's decision requires that judge's discretion be safeguarded and be independent from any public or private influence.

On the other hand, too much discretion on the part of the judiciary might open gaps for abuse of this power. Therefore, lack of accountability and transparency of the judicial processes are also important components of the causes of judicial corruption. According to Rose-Ackerman (2007:15) the discretionary power of the judiciary is important and a fair balance between the independence and accountability of the judiciary needs to be established. Either too much independence or too much control can both risk corrupting the courts (Rios-Figueroa 2006).

Misuse of funds by court administrators and judges is sometimes argued to be a form of judicial corruption. Even TI seems to accept the notion that 'misuse...[of] scarce public funds that most governments are willing to allocate to justice' is judicial corruption. The reasoning is that this weakens the judicial process. This is not always the case, however, as public officials' abuse of office for personal profit or enrichment may meet the criteria for normal petty corruption. Thus, misuse of funds or the power of the office for personal gain need not constitute judicial corruption per se. Under some circumstances where such misuse jeopardises judicial functioning, it could also amount to judicial corruption.

In contrast with TI, Buscaglia (2001; 2007) provides a broader definition of judicial corruption. His framework is wider and it includes political and social factors. (2001:235) defines judicial corruption as ‘the use of public authority for the private benefit of court personnel when this use undermines the rules and procedures to be applied in the provision of court services’. Buscaglia (2001:235) classifies judicial corruption in two main types – administrative corruption and operational corruption. The first is when ‘court administrative employees violate formal or informal administrative procedures for their private benefit’. This ‘administrative corruption’ resembles TI’s definition. The second type is mostly regarded as the political influence on the course of court operations. As Buscaglia puts it, ‘operational corruption’ is a situation when courts and judges act as proxies of politics. Judicial corruption here is ‘usually part of grand corruption schemes where political and/or considerable economic interests are at stake’ (Buscaglia 2001:235).

Based on the above discussion a more valuable definition which may help to better understand the pattern of judicial corruption in the Western Balkans is proposed as follows: judicial corruption is any form of undue influence that encourages a judge, willingly or otherwise, to take a decision which under the same circumstances and in the absence of undue influence, a reasonable judge, would not have otherwise taken. This influence can be either formally executed (i.e. institutional, social, economic and political) or informally implied (i.e. personal political beliefs, friendship relations, kinship, blackmail, coercion and bribe).

What all the existing literature highlights is that many elements of judicial corruption (e.g. bribery, extortion, brain drain, political control of the judiciary, low quality judges, lack of ethics, poor infrastructure, etc.) are found in the majority of developing countries.<sup>11</sup> This raises the question of whether it is the stage of development or other factors that give rise to this phenomenon. Therefore, one might ask whether judicial corruption is flourishing in the Western Balkans because of a relatively undeveloped understanding of democratic practice and the rule of law. Alternatively, might it be the abuse of liberal democracy’s principles by post-communist political elites that stimulates judicial corruption in the Western Balkans?

By examining the conditions that have made this subversion possible, this thesis hopes to specify some of the empirical preconditions for establishing a liberal rule of law. In this sense, the implications of my study extend beyond the Western Balkans to other developing and transitional post-communist societies.

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<sup>11</sup> For more see Transparency International (2007) *Global Corruption Report 2007: Corruption in Judicial Systems* (Cambridge: Cambridge University Press), pp.168-171.

## State Exploitation or Political Corruption

Having explained what judicial corruption means and illustrated some of its dynamics, I now contrast it with state exploitation and political corruption in post-communist societies. Here I seek to distinguish state exploitation and political corruption, on the one hand, and judicial corruption, on the other.

As described above, judicial corruption means all inappropriate actions and undue influences which jeopardise the impartiality of the judiciary. I have shown that it can involve judges and prosecutors. It may also, according to many analysts, entail advocates and police alike (Buscaglia 2007). Any sort of economic, political or cultural pressure which might weaken the independence of the judiciary can be considered as judicial corruption.

On the other hand, state exploitation involves the manipulation of state institutions, resources and/or power by political elites or parties to enhance their collective power (Gryzmala-Busse 2007). Privatisation and the politicised distribution of assets is one example. It may mean that the structuring of institutions and legal frameworks are shaped to serve governing elites' or parties' agendas rather than society. Where these ends are criminal, this activity is called state crime (Green and Ward 2004). In contrast, political corruption is misuse by officials of public power and resources for personal or partisan profit. Bribes for state contracts are a classic example. However, it should be emphasised that often both concepts overlap and it can be difficult in practice to differentiate them.

In order to comprehend how these crimes operate in the Western Balkans, we first need to examine how the post-communist state works and how political parties govern the state in democratic transition. This study, therefore, now briefly develops the relationship between two fundamental actors in institution-building there: political parties and government. These actors are paramount to both the development of the state and to its exploitation or erosion through corruption. Where state exploitation occurs, it can be an important contributor to judicial corruption. Political appointments of corrupt judges can provide a safe harbour used by corrupt officials to maintain their status quo.

For the purpose of this research, post-communist societies are recognised as having a long tradition of exploitative state relations – perhaps partly due to their utopian constitutional formations (Reiman 1987).<sup>12</sup> In such a context, state exploitation tends to be a type of power resource. Political parties exploit the state to gain power which serves them in pursuing their political and personal agendas. In contrast, political corruption entails the misuse by the government or political officials of their governing powers and resources for illegitimate, usually secret, private gain.<sup>13</sup>

In other words, exploiting the state gives parties political power to pursue their agendas, and political corruption is misuse of this state power for personal or particularistic non-

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<sup>12</sup> Reiman (1987:3) defines an exploitative society as 'when its social structure is organised so that unpaid labour is systematically forced out by one class and put at the disposal of another... On the force-inclusive definition of exploitation, any exploitative society is a form of slavery.'

<sup>13</sup> See OECD (2007), definition of 'political corruption', Glossary of Statistical Terms, OECD; available at <http://stats.oecd.org/glossary/detail.asp?ID=7290> [accessed February 15, 2009].

party gain. In some cases, this state power may extend to control of the judiciary through executive or legislative mechanisms such as budgetary authorisation; Parliamentary consent on the nominations of Supreme and Constitutional Court judges; laws regulating judicial structure, conduct and accountability, among other things. Thus, judicial corruption can sometimes be a consequence of state exploitation or political corruption. This is because those who control the state might easily exploit or misuse the judiciary (Karklins 2005).

Many analysts argue that in post-communist societies, judicial corruption, state exploitation and political corruption have some specific patterns. In part, this is because transitions to democracy differ and each state's trajectory had its own characteristics. The shift of the political regime included at the same time changes in politics, economy, and cultural behaviour. For instance, Poland and Hungary followed a more institutional and law-based path to democracy; others like Romania and Albania experienced massive demonstrations and greater upheaval (Ekiert 2003:89-92). Fledgling political parties rushed to take advantage of the old regime's destruction to increase their dominance in the new institution-building, sometimes for personal gain (Gryzmala-Busse 2007:2).

To maintain access to state exploitation, post-communist parties did not rely on the classic patterns used by their counterparts in the West like the establishment of clientelist<sup>14</sup> networks or effective political programmes. The concept of 'clientelism' in developing countries combines the Weberian concept of patrimonialism with the rational-legal form otherwise known as 'neopatrimonialism' (Eisenstadt 1973) in which a neopatrimonial administration makes no distinction between the public and private sphere and disguises its patrimonial behaviour behind a legal outfit (Ward and Green 2004:22).

Thus the capacity for the post-communist elite for corruption arose out of the construction of the new state. This included new institutions and legal frameworks. In other words, the state was exploited through formation of institutions and laws tailored to further the political parties' interests (Holmes 1997:337). As Anna Gryzmala-Busse (2007:31) states: 'Parties politicised the privatisation and distribution of state assets for their own benefit and skimmed directly, as part of a larger system of an unregulated and unrestricted party funding.'

Therefore, state exploitation is a party-state relationship and this relationship is based on the use of political power for party interests. It is important to emphasise that the interrelation between state and political parties, though grounded in a dialectical process, is analytically a bit like that of the chicken and the egg (Holmes 2006:190). It is not always clear in such transformative situations whose interests historically congealed first – those of the political parties or those of the state.

The insularity of politics in transitional societies is another factor which has fostered the politicisation of institutions. Insularity allows elite control to grow strong. It is quite

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<sup>14</sup> In the context of this study I have borrowed Green and Ward's (2004:21) definition of 'clientelism': a 'pattern of social exchange between patrons, normally the holders of political administrative offices, and clients, who may be private citizens, business or more junior officials. The patron exercises power or influence in favour of the client, who reciprocates by offering electoral, political donations or personal gifts.'

impossible in societies like Albania to gain employment in public administration without having a reference from the party elite (Cepiku 2004). The reasons are many but traditionally, political employment was outsourced only to individuals attached to political parties, both for security reasons and to retain it as a resource for 'clientelism' (Vickers and Pettifer 2007). In other words to maintain the machinery of corruption, governing elites sought to secure control of state functions through allocation of offices by means of rent-seeking arrangements or exchange of favours between state and non-state actors (business or criminal networks) (Kopecký 2006).

In contrast with Western traditions, political parties in the post-communist Western Balkans were not a product of civil society or legitimised interest groups. They were a legacy of post-communist elites. The development of political parties was strictly attached to an agenda of state exploitation. To that end, the political ruling party recruited 'people who live from politics rather than for politics' (Kopecký 2006:253).

On the other hand, despite commonalities, political corruption in the Western Balkans has been framed in terms of particular patterns. These patterns are related to the 'monopoly' power of the state – an attitude inherited from the former regime (Krastev 2002; Prato 2004). The monopoly was based on decision-making and institutional control. In fact, sometimes post-communist corruption is conceptualised as 'stealing the state' or 'state capture' (Karklins 2005).

Thus, in a way quite similar to state exploitation, political corruption is also about political power, state capture and misuse of public discretion – but in this case for personal interests (Amundsen 1999). Therefore, it is 'the state' involvement factor which has made researchers '[consider] corruption as a state-society relationship. This is [important] because public sector corruption is believed to be a more fundamental problem than private sector corruption, and because controlling public sector corruption is a prerequisite for controlling private sector corruption' (Andvig and Fjeldstad 2001).

It should be mentioned, however, that although state exploitation might appear similar to political corruption, they are not identical (Holmes 2006:190). It is argued that there are interchangeable elements between them (rent seeking,<sup>15</sup> clientelism, bribes<sup>16</sup>) but there are also differences as noted above (Kopecký 2006:259-260). However, when pressed to list the differences, many admit that there is ambiguity and it is not always easy to distinguish them clearly (Gryzmala-Busse 2007:27).

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<sup>15</sup> Khan (2000:21) defines rent seeking as 'the expenditure of resources and effort in creating, maintaining, or transferring rents...[which can] also be illegal, as in the case of bribes, illegal political contributions, expenditures on private mafias, and so on.'

<sup>16</sup> Bribery is defined as the 'offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal or a breach of trust'. See TI's 'Business Principles for Countering Bribery' (2009) p.5; available at <http://www.cgu.gov.br/conferenciabrocde/arquivos/English-Business-Principles-for-Countering-Bribery.pdf> [accessed May 20, 2009].



# Judicial Corruption in Post-Communist Societies

Judicial corruption is very complex and relates with many aspects of society's rules and institutions. Judicial corruption in post-communist Europe differs by country, region, and period of time. To demonstrate its existence and trends I will use both TI's Corruption Perception Indicator and also Freedom House indicators. The differences between their surveys are minimal (Holmes 2006:106-120).

One might imagine that, as the result of political transition, the level of judicial corruption in the Western Balkans was high only during the early 1990s. Figures show, however, that, even after ten years of transition, the indicator for corruption of the judiciary remains critical. Holmes (2006:133-136), in an extensive survey, classified judges in post-communist countries as highly corrupt. In his analysis of official and non-official sources, some indicators suggested that judicial corruption might play an important part in generating corruption as a whole.

To this end, if the judiciary proves to be corrupted and inefficient in its dealings with criminal cases, criminality is likely to increase (Buscaglia and Van Dijk 2003). The public may lose confidence in justice; and corrupted officials, confident that the chances of being sentenced for their misdeeds would be small, could intensify their corrupt activities. Therefore, a strong judiciary is vital in dealing with corruption and crime. In what seems a paradox, however, according to Holmes (2006) the most corrupt countries seem to have low criminal rates. Countries like Albania which are ranked at the top of the list of most perceived corrupted countries have questionable records regarding criminality. Sweden, for example, had a reported crime rate 185 times higher than that of Albania (Holmes 2006:90-91). Thus, criminal statistics in Albania should be regarded with caution as they do not often present the reality. They are frequently manipulated and reported by the executive in a way that intends to portray anti-corruption reforms and the war against crime as successful (Shaw, Van Dijk and Rhomberg 2003).

This asymmetry of low crime rate versus high level of corruption is explained by Holmes in different ways, almost all of which lead to lack of trust in the institutions dealing with criminality. One factor is social, as people do not report criminal cases because they find self-justice more suitable and more respected in their society. Another factor is institutional since a majority of public officials in cases involving criminal activities such as bribery, fraud or embezzlement are not convicted.

According to Holmes's data, the differential between cases reported to the authorities and those convicted is high in countries like Bulgaria and Hungary. Less than 50% of the cases involving corruption are convicted by the courts. In Bulgaria during 1997 and 1998, the ratio between cases reported/convicted was less than 20% (1997, 95/26 and 1998, 136/21). However, there was an improvement (reported cases/convicted cases) during 1999 and 2000 when the percentage increased from approximately 20% to almost 50% with 52/25 in 1999 and 59/21 in 2000. In Hungary, figures at first appear more promising but what is noticeable is the lack of a positive progression. In a three-year period, roughly half of the pending cases received a court verdict (1998, 902/274; 1999, 609/289; and 2000, 650/274) (Holmes 2006:98-99).

Hence, these data suggest another risk indicator of judicial corruption: the ratio between reported and sentenced cases. The lower the ratio the higher could be grounds for suspicion of judicial corruption (Karklins 2005:34-35). In the context of my study, this may also show that not only judges but also state police and prosecutors may play an active part in judicial corruption. So cases may be reported by people but they may be closed afterwards by corrupt state police or prosecutors and not sent to the courts for further proceedings. This pattern could be associated with all post-communist countries in Europe including Russia (Holmes 2006:93-95). It should be emphasised that the practice of corruption across post-communist countries is very similar (Karklins 2005:19; Kurkchiyan 2003).

A new form of state patronage is linked with the inherited communist ideology of governance (White 2009). Control of the state by a few (e.g. dictator and his closed circle) in the name of all (i.e. the 'people') changed gradually during the democratic transformation. The new form of governance now consists of few in the name of a few (i.e. political elites) (Holmes 2009; Krastev 2002). This is because state institutions, including the judiciary, appear to have been captured by political elites.

Many examples show that the courts have been used politically since democratic transition in order to pursue the agenda of these elites (Popova 2010). The double standard of decisions rendered by high-level courts in many post-communist countries on political elections is one indicator of the links between judges and political elite. For instance, they tend to render decisions in favour of the most likely political party to win the elections (Trochev 2006). If the new government criticised the court this meant that the judges' predictions were wrong (ibid). Whether to call it a warning signal indicating a lack of judicial independence or bad betting on behalf of the judges trying to protect their status quo, both could be considered features of judicial corruption.

One striking pattern of judicial corruption that is especially frequent in post-communist Russia is known as 'telephone justice' (Ledeneva 2008).<sup>17</sup> It is well known by society as an element of corruption embodied in the courts. In a survey designed by Professor Alena Ledeneva ('*telefonnoye pravo*'), only 6.4% of Russian respondents reported that nothing but the law influenced judges' decisions in the courts, while 6.1% voiced this view for procurators' offices (ibid:340).

Another staggering pattern of judicial corruption appears in complicated laws made purposely to confuse the system. A chaotic net of laws can provide space for corrupted judges or prosecutors to escape from criminal charges or use them for their interests. As Rasma Karklins (2002:29) puts it, 'Lawyers...[sometimes] become short-term legislators in order to come up with complicated laws...[and] then return to private practice where they command high fees as the sole experts who can negotiate the same confusing laws.'

The high levels of perceived judicial corruption in the Balkans and Eastern Europe<sup>18</sup> might be assumed to be the result of the economic and political transformations of the 1990s.

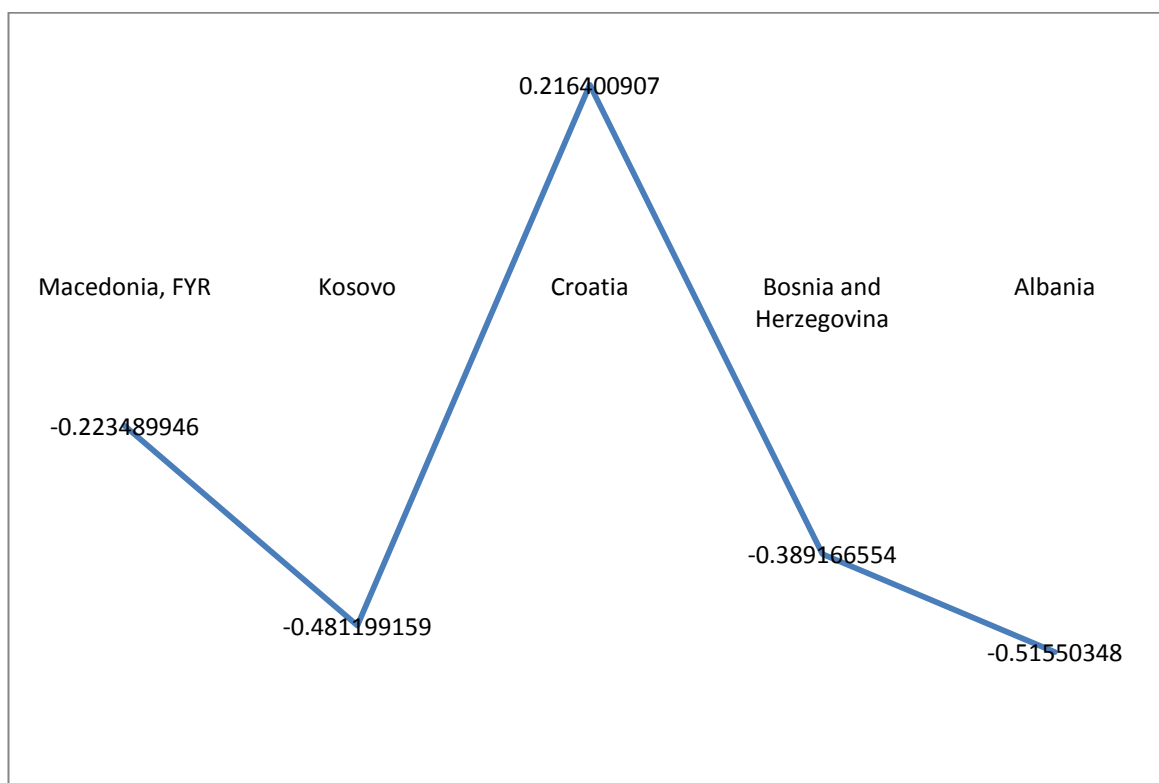
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<sup>17</sup> According to Karklins 'telephone justice' is when 'Communist party leaders would pick up the telephone and call prosecutors and judges and tell them what outcome the party expected in specific cases' (quoted at Ledeneva 2006:25).

<sup>18</sup> See the World Bank, Business Environment & Enterprise Performance Surveys (BEEPS), Albania

According to a BEEPS report of 2005, figures continue to worsen even after the key transitional years in terms of the judiciary and the spread of corruption in the Western Balkans. Albania continues to score poorer than any other country in the region on corruption and corrupt functioning of the judiciary<sup>19</sup> even in the last decade (see Figure 1).

**Figure 1 Rule of Law, Comparison Across Western Balkans Countries for 2009**



Source: Kaufmann, D., Kraay, A. and Mastruzzi, M. (2009) 'The Worldwide Governance Indicators: Methodology and Analytical Issues', World Bank.

2005; available at <http://siteresources.worldbank.org/INTECAREGTOPANTCOR/Resources/BAAGREV20060208Albania.pdf>, [accessed December 10, 2009].

<sup>19</sup> See IDRA (2006) 'Corruption in Albania: Perception and Experience Survey 2006'; available at [http://www.idra-al.org/pdf/en/Findings\\_Survey2006\\_Corruption\\_Perception\\_IDRA\\_web.pdf](http://www.idra-al.org/pdf/en/Findings_Survey2006_Corruption_Perception_IDRA_web.pdf) [accessed March 20, 2009].

# Judicial Corruption in Albania

In Albania, as in many Western Balkan countries, the transformation from the communist system to democracy was more ideological rather than institutional. Many individuals of the former regime are employed and continue to steer new democratic institutions (Vickers and Pettifer 2007). Several attempts in early 1995 by the Democratic Party (DP) to achieve legal reforms pretended to purge the new democratic system of the remnants of the old system. The results were at best partially successful. As Austin and Ellison (2009:176) point out:

‘Albania’s post-communist justice is about the selective destruction of the past not an attempt to deal with it. At different times between 1991 and 1997, the banner of lustration was held aloft by both left and right wing parties in order to justify political purges carried out purely to weaken their opponents. ... what we have seen taken place in Albania is primarily politically-inspired vengeance rather than an attempt to deal with the past in a constructive and objective way.’

Thus, the political transition opened gaps for the governing elites to control and abuse independent institutions including the judiciary. Organised crime flourished and corruption arose in almost all public institutions.<sup>20</sup> Though many anti-corruption reforms have been made in different sectors, corruption in the judiciary remains problematic.<sup>21</sup> Judicial corruption is still endemic. The judiciary is perceived as the most corrupted public institution by Albanians, especially in urban areas.<sup>22</sup> The national perception that corruption prevails within the judiciary increased from 71.7% in 2004 to 74.7% in 2005. In urban areas there has been a steady decrease from 82.9% in 2004 to 75.2% in 2006.<sup>23</sup>

There is another variation between national and urban perceptions and it relates to institutions fighting corruption. Whereas the General Prosecutor’s Office has been classified as the most corrupt by the general public, people living in urban areas have

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<sup>20</sup> The EU Instrument for Pre-Accession Assistance (IPA), programmed to help the West Balkans to join the EU, emphasises that ‘The fight against corruption and organized crime is defined as a top priority in the EU Communication on Enlargement Strategy and Main Challenges 2007-2008. Corruption is widespread in the region and deeply rooted in society, organized crime remains a serious concern. ... measures taken are not commensurate with the magnitude of the problem.’ For more see European Commission (2008), Instrument for Pre-Accession Assistance (IPA); Multi-Annual Indicative Planning Document (MIPD) 2008-2010 Multi Beneficiary, European Commission; available at [http://ec.europa.eu/enlargement/pdf/mipd\\_multibeneficiary\\_2008\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/mipd_multibeneficiary_2008_2010_en.pdf) [accessed March 20, 2009].

<sup>21</sup> See American Bar Association report (2008) ‘Judicial Reform Index for Albania 2008’, American Bar Association, Central and Eastern European Law Initiative (ABA/CEELI).

<sup>22</sup> See IDRA (2006) ‘Corruption in Albania: Perception and Experience Survey 2006’, pp.5-6.

<sup>23</sup> Ibid, pp.6-7.

depicted the judiciary as their least corrupt sector.<sup>24</sup> However, both national and urban perceptions are similar in pointing to the judiciary as the least transparent institution.<sup>25</sup> With slight improvements, the general perception of people on the judiciary remained critical even during 2008-09. According to the 2010 corruption survey by the Institute for Development Research and Alternatives (IDRA) in Albania, only '35.9% of the respondents declared that they trust the judicial system either "A lot" or to "Some" degree'.<sup>26</sup>

As mentioned above, one of the most distinguishing features of corruption in post-communist societies is the control of independent institutions by political elites. A good example of this control is how the Albanian government tried to use the Law of Lustration – or, as the Albanian media refers to it, the law of 'spies' or 'files'. According to Jirina Šiklová (1999:254), 'Lustration is the process of screening individuals in positions of political economic influence in order to determine whether they once had ties to the former state security service. Screening of current and future state officials and employees aims to determine the extent of their collaboration with the former secret police.'

In Albania, the wording of the lustration law is very broad and ambiguous.<sup>27</sup> It gives to the executive extensive and highly discretionary power to target anyone they consider to have had a key role in notorious 'political processes' during the communist regime. This law, enacted to foster universalism, has become an instrument of particularistic interests (Austin and Ellison 2009:188).

Though it is estimated that more than 30 prosecutors, let alone judges, could legitimately be purged under the Albanian lustration law, officials who tolerated corruption were left untouched.<sup>28</sup> Some of the prosecutors, who were targeted in 2009, were investigating important files where high profile politicians were being accused of corruption. On January 15, 2009, the leading prosecutor of the most controversial case for the last five years (i.e. Gerdeci),<sup>29</sup> Zamir Shtylla, asked the General Prosecutor Ina Rama to be released from all his

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<sup>24</sup> Ibid, p.11.

<sup>25</sup> Ibid, pp.13-14.

<sup>26</sup> See IDRA (2010) 'Corruption in Albania: Perceptions and Experiences 2010', p.24.

<sup>27</sup> See the US Department of State, '2008 Human Rights Report: Albania', which notes that 'On December 22, the parliament passed a controversial "lustration" law, which is expected to allow for the dismissal from public office of a wide range of officials who participated in "political processes" while serving in higher-level government positions under the communist regime, including judges, and prosecutors, and law enforcement officers. The vague wording of the law gives the government wide discretion in determining what "political processes" means, thereby allowing it considerable latitude in determining if an official should be dismissed from duty'. Available at <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119064.htm> [accessed January 20, 2009].

<sup>28</sup> See the declaration of the then spokesman of the Democratic Party parliamentary group (the majority) Aldo Bumci asking for an immediate resignation of six members of the Albanian Constitutional Court. *Shqip Gazette* (2009) 'Bumci: Members of the Constitutional Court subject of the lustration law should leave' (Te ikin anetaret e Kushtetueses qe preken nga dosjet), January 19.

<sup>29</sup> Sokolaj, T. (2009) 'Head prosecutor of 'Gerdeci' case: Withdraw from the undue influences' (Kryehetuesi i Gërdëcit: Iki nga presionet). *Panorama Gazette*, January 15.

functions on this case. He based his resignation on 'numerous political pressures exerted on him publicly'.

The Albanian lustration law has been harshly criticised for its broadness and politicisation by international bodies monitoring democracy (OSCE) and human rights (ODHIR). These groups highlight that the law needs revision to 'meet international standards' and that, as it is, it presents 'serious constitutional and political' problems.<sup>30</sup> The US embassy in Tirana was even more straightforward in its statement that: 'we are deeply concerned. This law has raised serious legal, governmental, and constitutional questions among Albania's international partners, including the United States. We call on the Government of Albania to take immediate steps in consultation with national and international experts to ensure that this law would meet international standards.'<sup>31</sup>

Similar incursions have been made by the powerful into judicial actions across the spectrum of law. It should also be emphasised that the law was 'frozen' by the Constitutional Court after being challenged by the opposition party. In a majority vote of 7 to 2, the court suspended the law and decided to ask the Venice Commission<sup>32</sup> for an 'amicus curiae' opinion. Several judges of this court were subject to this law, but according to the Opinion of the Venice Commission 'the lawmaker has failed to meet its obligation to provide, through an organic provision, for the ability of the Court to examine the constitutionality of the Lustration law even in cases of lustration leading to a conflict of interest with some of the judges'.<sup>33</sup> In 2010, after receiving this 'Opinion', the Constitutional Court found the 'Law of Lustration' unconstitutional.<sup>34</sup>

The decision procedure followed by the court echoes the previous patterns of judicial corruption in post-communist societies. First, the high-level courts can fractionate or provide double-standard decisions on political grounds. In this case, the Constitutional Court used the balance mechanism of the Venice Commission opinion to avoid political pressure and to take advantage of the national elections taking place just three months later. This decision of the Constitutional Court may also indicate that old system judges who are still part of the system probably keep alive informal links to sustain the agenda of political elites. Or this decision may have been in the form of gratitude to the Socialist Party (SP; now in opposition) which in 1998 intervened in the formulation of the Law of

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<sup>30</sup> For more see the OSCE press release on December 22, 2008; available at <http://www.osce.org/item/35778.html> [accessed February 5, 2009].

<sup>31</sup> See statement from the US Embassy, December 23, 2008; available at [http://tirana.usembassy.gov/08pr\\_1218.html](http://tirana.usembassy.gov/08pr_1218.html) [accessed February 6, 2009].

<sup>32</sup> The Venice Commission is the European Commission for Democracy Through Law with the primary task of advising its members on constitutional matters. Opinions of the Venice Commission are not binding; however they have a great political impact, especially in countries with fragile democracies. Usually the expertise provided by this Commission is reflected in laws for which the opinion is sought. Available at [http://www.venice.coe.int/site/main/Presentation\\_E.asp](http://www.venice.coe.int/site/main/Presentation_E.asp) [accessed January 20, 2012].

<sup>33</sup> See the Amicus Curiae Opinion of the European Commission for Democracy Through Law (Venice Commission) (2009) 'The Law on the Cleanliness of the Figure of the High Functionaries of the Public Administration and Elected Persons', issued October 9-10, p.11.

<sup>34</sup> See the Decision of the Constitutional Court no.9 dated March 23, 2010.

Verification (i.e. a former lustration attempt) and excluded judges and prosecutor from any inquiry (Austin and Ellison 2009:192).

It is worth mentioning here that, similarly when the Lustration Commission was operating under the auspices of the SP, the first 'spy' detected was the head of the Constitutional Court – at that time Mr Rustem Gjata. This move was not considered to be part of a well-intentioned move to purge the system of old remnants of the former regime. Instead, some analysts argued that this political step was a calculated move by the SP to secure the approval of the new constitution that would be introduced by them just months later (Austin and Ellison 2009:193; Baze 2008).

This is a pessimistic scenario regarding quick and positive transformation of the judiciary as many reforms designed to undermine the power of post-communist elites could be barred by high court judges. Aldo Bumci, the representative of the DP parliamentary group in 2009, evoked this problem by openly asking for the resignation of six Constitutional Court judges.<sup>35</sup> Second, the lustration law is used to re-populate the judiciary and prosecution with partisan judges and prosecutors. Finally, this law is also been used to pressure members of parliament, supporters of position and of opposition parties which disagree with the 'progressive' reforms of the governing elites (Bezhani 2002). In the entire political history of Albania after the 1990s no significant attempt or legal reform has been made to really lustrate the system and to cleanse it of the old politburo 'nomenclatura' (Austin and Ellison 2009:194).

## Organised Crime and Judicial Corruption

Organised crime often plays an important role in relation to judicial corruption. That interplay seems, however, to have found little space in the academic analysis of organised crime. In the following pages, I begin by defining organised crime and highlight some characteristics of Albanian organised crime. Then, in the last part of the chapter, I explore how organised crime interrelates with judicial corruption and what some specifics of this linkage might generally be.

Organised crime schemes and networks are diverse and very complicated. They operate under deep secrecy and very secure connections. These are some of the reasons which explain why most information on the nature of organised crime comes from journalists' articles and the personal experiences of former criminals (Arsovska 2008). Despite that, many analysts have offered some interesting depiction of and analyses of mechanisms used by organised crime (Williams and Godson 2002). My own research explores one of the practices used by criminal groups to undermine the rule of law – namely corruption of the judiciary.

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<sup>35</sup> *Shqip Gazette* (2009) 'Bumci: Judges of the Constitutional Court affected by the lustration law must leave' (Bumçi: Të ikin anëtarët e Kushtetueses që preken nga dosjet), January 19.

Organised crime has many definitions and each country has given considerable emphasis to it in their penal frameworks/codes (Levi 1998; Paoli 2002). The diversity of definitions shows the intricate structure of this crime (Levi and Maguire 2004). Albanese (2000:410), points out four elements which constitute organised crime: 'a continuing organization, an organization that operates rationally for profit, the use of force or threats, and the use of corruption to maintain immunity from law enforcement'.

## **Albanian Organised Crime**

According to the literature, organised crime in Albania has a particular structure which is based on kinship ties and customary norms. The role of geography and ethnicity are some other elements which are considered (Transcrime 2004:39). Albanian criminals usually operate in small groups and their membership varies from three to ten members per cell. They function differently and independent from other similar ethnic groups in the region. Some of their distinguishing patterns are violence, brutality, high secrecy and determination (Raufer 2002).

One of the most highlighted elements of Albanian organised crime is violence (Arsovska 2008). Many analysts have suggested that Albanian culture and customary laws may be the main stimulus for the violence of organised crime in this society (Arsovska and Verduyn 2008; Stojarová 2007). They have also argued that the archetype of Albanian organised crime resembles those in Italy, like the Ndrangheta which bases its strength on close family ties and the security of kinship.<sup>36</sup>

Albanian gangs are noted to be cautious to preserve the ethnic component intact and do not mix with other nationalities.<sup>37</sup> It is argued that because of this kinship-based structure, Albanian organised crime is very difficult to infiltrate by law enforcement agencies or other criminal groups (Xhudo 1996). Due to Albania's geographic location many criminal routes pass through Albanian lands and engage local organised crime networks. As a top Italian Prosecutor Cataldo Motta declared, 'Everything passes via the Albanians. The road for drugs and arms and people, meaning illegal immigrants destined for Europe, is in Albanian hands.'<sup>38</sup>

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<sup>36</sup> See the report of Senator Alberto Maritati (2002) 'Organised Crime in the Balkans with Reference to Albania', November 16, Rome; available at <http://www.cespi.it/Rotta/Ascodcriminalit%C3%A0/maritati.PDF> [accessed February 20, 2009].

<sup>37</sup> For more see Europol (2008) 'European Organised Crime Threat Assessment (OCTA) 2008'; available at [http://www.europol.europa.eu/publications/European\\_Organised\\_Crime\\_Threat\\_Assessment\\_\(OCTA\)/OCTA2008.pdf](http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_(OCTA)/OCTA2008.pdf) [accessed March 10, 2009].

<sup>38</sup> See BBC News (2000) 'Albanian Mafia Steps Up People Smuggling', August 3; available at <http://news.bbc.co.uk/1/hi/world/europe/863620.stm> [accessed May 25, 2009].



According to Europol, today Albanian criminal groups have ties throughout Europe and America.<sup>39</sup> They often have entered areas as subcontractors of local organised crime there.<sup>40</sup>

Gradually they have emerged as an independent force (Ruggiero 2000).<sup>41</sup> Using this approach, they have seized power in some areas from even the fierce Camorra groups in Italy<sup>42</sup> and have partially subverted what remains of La Cosa Nostra's leadership of organised crime in America (Frieden 2004; Saviano 2007).

In addition, it is reported that Albanian organised crime invests illicit profit in legitimate business and often uses legal enterprises as camouflage. Many corrupt public officials take part as members of the unit.<sup>43</sup> The level of organised crime in Albania is still critical. To illustrate, Turkey with a population of more than 75 million people recorded only 47 criminal groups in 2000 (i.e. 5% of the Turkey's population), whereas in Albania, with a far smaller population, the number of criminal groups reported was 23 or 50% less than Turkey.<sup>44</sup>

The situation seems to be deteriorating, as over a period of eight years (2000-08) the number of criminal groups in Albania doubled. According to the Albanian state police the number of apprehended and captured criminal groups for 2008 amounted to 40.<sup>45</sup> At the same time, other ethnic Albanian organised crime rings like those from Kosovo controlled 70% of massage parlours in Soho, London during 2000-03 where prostitution was a 'supplementary' service (Väyrynen 2003).

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<sup>39</sup> Europol (2011) 'EU Organised Crime Threat Assessment (OCTA) 2011', April 28; available at [https://www.europol.europa.eu/sites/default/files/publications/octa\\_2011.pdf](https://www.europol.europa.eu/sites/default/files/publications/octa_2011.pdf) [accessed December 6, 2011].

<sup>40</sup> See the testimony of Grant D. Ashley, Assistant Director, Criminal Investigative Division, FBI Before the Subcommittee on European Affairs, Committee on Foreign Relations United States Senate, October 30, 2003; available at <http://www.fbi.gov/congress/congress03/ashley103003.htm> [accessed May 15, 2009].

<sup>41</sup> See Europol (2008) 'European Organised Crime Threat Assessment (OCTA) 2008'; available at [http://www.europol.europa.eu/publications/European\\_Organised\\_Crime\\_Threat\\_Assessment\\_\(OCTA\)/OCTA2008.pdf](http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_(OCTA)/OCTA2008.pdf) [accessed March 15, 2009].

<sup>42</sup> According to Europol (2004), 'Camorra organisations do not allow much room for foreign organisations. However, some foreign groups, especially Albanian, Nigerian and Chinese have acquired some autonomy in managing [the] drug trafficking, exploitation of prostitution and the black market [activities] of their...clandestine compatriots.' See Europol (2004) 'European Union Organised Crime Report 2004'; available at [http://www.europol.europa.eu/publications/Organised\\_Crime\\_Reportsin\\_2006\\_replaced\\_by\\_OCTA/EUOrganisedCrimeSitRep2004.pdf](http://www.europol.europa.eu/publications/Organised_Crime_Reportsin_2006_replaced_by_OCTA/EUOrganisedCrimeSitRep2004.pdf) [accessed March 20, 2009].

<sup>43</sup> Report on the Organised Crime Situation in Council of Europe Member States, Council of Europe, Strasbourg, December 2000; available at <http://www.coe.int/t/dghl/cooperation/economiccrime/organisedcrime/Report2000E.pdf> [accessed April 25, 2009].

<sup>44</sup> Ibid.

<sup>45</sup> See Albanian State Police annual report 2008, in Albanian; available at <http://asp.gov.al/2008/dhjetor/analiza-vjetore-prezantimi.pdf> [accessed May 15, 2009].

Having explained some characteristics of Albanian organised crime generated from the literature I now turn to techniques that organised crime uses to corrupt the judiciary. As stated above, due to its complexity, it is difficult to have a classical definition of organised crime. Many organised crime groups have hierarchical structures with solid discipline, and control thousands of members and millions in cash (Varese 2010). The presence of organised crime extends beyond illegal markets to political and financial domains (Burger 2009).

The activity of organised crime is multifarious and requires that many actors be in play or be corrupted. Thus, criminal groups have both enemies and allies where one of the most important opponents is the state and its institutions. There are two possible ways for organised crime to bypass the state: purchasing it or subverting it (Jamieson 2001). In other words, bribes, extortion, pressure, blackmail and exchange of favours are some of the many weapons used by organised crime to succeed.

Of all the different strategies, corruption is one of the most frequently used tools to penetrate public institutions. Increasingly it is central to definitions of organised crime. After almost three decades, various analysts on issues related to organised crime have agreed on the main elements that render ordinary criminal activity as an organised crime. Across a range of 15 prominent authors researching organised crime, 11 of them considered corruption as a fundamental component of organised crime activity. Albanese's definition, mentioned earlier, views corruption as a determinant force of organised crime and not as an optional factor.

In short, organised crime using corruption to manipulate public institutions could gather such power that it might be difficult to control even in countries with consolidated institutions and modern legal frameworks.<sup>46</sup> Hence, the question raised is whether a criminal organisation can be successful without having strong ties to public institutions such as the judiciary. In this regard, it is important to look more closely at the links between organised crime and judicial corruption. In the following section, the research will briefly explore some patterns of the interplay between organised crime and judicial corruption.

## **Links of Organised Crime to Judicial Corruption**

Organised crime is complex and the borders of its legal and illegal arrangements are often difficult to define (Paoli 2002). Significant parts of illicit business are kept in the shadows and the working mechanism is not easy to understand. This is because of the sophisticated structure of organised crime and the extensive nature of its activity. As cited above, one of the main ways used by organised crime to survive is the corruption of public institutions.

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<sup>46</sup> Council of Europe (2001) 'Recommendation Rec(2001)11 of the Committee of Ministers to Member States Concerning Guiding Principles on the Fight Against Organised Crime', adopted by the Committee of Ministers on September 19, at the 765<sup>th</sup> meeting of the Ministers' Deputies; available at: [https://wcd.coe.int/ViewDoc.jsp?id=224773&Site=COE&BackColorInternet=DBC2F2&BackColorIntranet=FDC864&BackColorLogged=FDC864#\\_ftn6](https://wcd.coe.int/ViewDoc.jsp?id=224773&Site=COE&BackColorInternet=DBC2F2&BackColorIntranet=FDC864&BackColorLogged=FDC864#_ftn6) [accessed May 15, 2012].

Yet, organised crime uses corruption in all its forms either to neutralise the state or to circumvent obstacles generated by law enforcement agencies (Rose-Ackerman 1999).

It is not by chance that the growth of corruption has a positive correlation with development of organised crime in a society. In their survey, Buscaglia and Van Dijk (2003) concluded that the main factors contributing to the growth of corruption and organised crime are political, socio-economic, criminal justice and legal. These factors had different relations with organised crime and the use of corruption helped in varied ways. Both crimes are supportive of each other and unlikely to conflict at any point (Buscaglia and Van Dijk 2003:10). In this respect, organised crime tends to undermine justice by corrupting judges, prosecutors and investigative police (Buscaglia 2007). In this way organised crime seeks to pave the way for its longevity and to secure its economic and political sphere of influence.

Methods used by organised crime to pervert the judiciary suggested by Buscaglia and Van Dijk (2003) can be grouped in two broad categories. First, there is petty corruption where the entire chain of criminal justice actors is bribed sporadically for specific cases and no full control is exerted on the judiciary. Second, organised crime may control or capture the entire criminal justice system. Here organised crime attempts to 'purchase' politicians in order to infiltrate members of organised crime into public institutions. In countries where corruption is endemic, it is argued that there is a trend toward exchange of favours between political elites and organised crime.

To this end, the former offer access to institutions, goods and information, and the latter, in exchange, help to blackmail the political or economic opposition or launder illicit profits (Della-Porta and Vannuci 1999). According to Shelley (1998), 'The infiltration of the Ukrainian legislature by criminals became a serious problem. More than 20 members of the Parliament would be tried on criminal charges...[had they not held] their parliamentary immunity, according to Hryhory Omelchenko, a member of the Parliamentary Committee on Fighting Organized Crime and Corruption. Forty-four legislators, elected to local political bodies, also have criminal backgrounds.'

Further, in her later study on Russia, Shelley (2003) underscores that organised crime asks for state 'alliance' not only as a matter of security but also for strong economic reasons. In the early 1990s, organised crime began establishing monopolies in the Russian economy where almost 85% of the banking sector was controlled by organised crime (Shelley 1998). Therefore, in a situation where the concept of the state can hardly be distinguished from that of organised crime, the judiciary, like other independent institutions, might easily be tempted to change the 'boss' (Shelley 2003).

On the other hand, if the state is in alliance with organised crime then this makes it especially difficult to draft and implement legal instruments that can hamper criminality and corruption. As the case of Russia reveals, a strong nexus between organised crime and the state is very likely to undermine successful legal initiatives against organised crime and corruption (Burgher 2009; Volkov 2002). In fact, the interplay between organised crime and public institutions goes beyond immunity to governance itself. It has been shown that in remote areas where the power of the state is almost absent and enforcement of law hardly exists, it is for organised crime to exert the control and functions of a government. In many cases, they adjudicate among parties and their decisions are binding. In the early 1950s,

Italian judges in Locri, Calabria claimed that Mafia families were acting as a parallel court for agrarian disputes (Paoli 2003:162; Gambetta 1993).

Legal power emerges from a long tradition of mafia in enforcement of the customary code of honour. Many Mafia families today who enjoy great 'respect' in the community are often invited to resolve honour disputes. As Paoli (2003:163) points out, 'Even nowadays, where mafia is most strongly rooted, the Cosa Nostra and the Ndragheta families still represent themselves as fully-fledged alternatives to state power.' So, the role of organised crime with respect to the judiciary or policing could vary from 'defending' traditional values to 'business-type' security defence. They may act as the 'guardian' of their customer in case of any extortion by rivals. They can also offer their services in blackmailing other participants in a publicly tendered project.

It is interesting to note that the state is not only the enemy of organised crime but also its competitor. When the state is strong, people ask for the state institutions to resolve their dispute. When the state is weak, the Mafia offers its services at a certain cost. In his analysis of the Mafia relationship with business, Gambetta (1993:164) concludes that 'the police are seen as a competing supplier of protection'. The role of corrupt judges is important in the mechanism of organised crime – especially in societies where corruption is rampant.

Thus, in post-communist societies where laws are complex and criminal justice is weak, it is easy for organised crime to corrupt the judiciary (Karklins 2002). Therefore, the role of the judge in the scheme of organised crime commences when organised crime fails to circumvent other actors before coming to the court – prosecutors, police or other law enforcement agencies (Menéndez 2007). After this point, the corrupt judge can still help criminals evade prosecution or detention. Therefore, judicial corruption is like an 'insurance policy' for organised crime as even when their members are brought before the judge, they, in the worst scenario, will have assurance of receiving at worst the lightest punishments (Della-Porta 2001).

In short, the judiciary serves as the last resort to organised crime to escape prosecution and, as a result, this is likely to classify judicial corruption as the most determinant factor in fostering organised crime.

## Research Questions

In the analysis above, I showed that judicial corruption exists and that it is a concern in post-communist societies. I also emphasised that both judicial corruption and organised crime are two of the main obstacles for the Western Balkans in terms of economic development and consistent democratic political transition.

It appears from the discussion above that many cultural factors such as legal traditions and acceptance of the rule of law are essential for a fair and a strong judiciary. These elements are still embryonic in the Western Balkans. My research demonstrates that in post-

communist societies state exploitation and political corruption appear to be closely interrelated with judicial corruption. This research raises many issues regarding judicial corruption and its links to organised crime. It suggests this relationship is endemic and problematic for democracy in this region.

Taking stock of our discourse so far, the primary question guiding this project relates to the roots of judicial corruption in Albania. To that end I explore the main factors giving rise and life to this phenomenon – focusing especially on organised crime, its motivations, dynamics and justifications.

To better understand this complex problem, I begin now by formulating four specific questions to guide this project:

**1. To what extent does judicial corruption exist on a widespread basis in Albania and how can I demonstrate it?**

In this question, I seek to explore in more detail the presence of judicial corruption in Albania. It points us to a descriptive task. The research seeks to examine trends and to establish how pervasive judicial corruption is. Through this question, I will be guided to probe actors and parts of the judicial structure – for example judges of the First, Appeal, High (i.e. Supreme) or Constitutional courts – where corruption is most vivid. The research focuses on court procedures as well as on the interrelations among judges, solicitors/advocates, litigants, prosecutors and court administrative staff. It also guides me to develop a qualitative and quantitative assessment of its extent. This question directs the project to issues of accountability and transparency as well as practices that distort established procedure within the judiciary.

**2. What are the causal dynamics which are generating patterns of judicial corruption?**

This question directs the study to the socio-economic environment and to reasons why actors behave in this way. Among the factors I examine are: economic standards, state capture, and legal culture as well as family ties, regionalism (Krahinizem) and gender. I turn here to the discussion of possible factors embedded in Albanian society that could undermine the integrity and fairness of judges.

**3. What are the connections of judicial corruption to organised crime locally?**

This question directs me to critically evaluate the interplay between organised crime and judicial corruption in Albania more specifically. It focuses on the role of judges in organised crime and to the corrupting techniques used by such networks to distort the judiciary.

**4. Why are the judicial reforms yielding so few results?**

This question leads me toward efforts at judicial reform and the obstacles facing them. It guides the project to issues of legitimacy, accountability and the power distribution between state and non-state actors involved in the reform process. This question directs me to reflect on why judicial reforms lagged behind in relation to others such as market reforms. Here I focus on critically examining peoples' perception of the role of courts and law-making and see their implications and challenges to judicial reforms.

To summarise, this chapter outlined the key concerns and questions that have driven this thesis and defined the key concepts of judicial corruption, state exploitation, political corruption, and organised crime. It then described patterns of judicial corruption and hinted at the nature of its interplay with organised crime. Finally, it outlined some specific research questions which will help to structure this research.

The following chapter will review both the empirical literature and theoretical paradigms that have either been used or might be adapted to explain judicial corruption and also organised crime. These literatures will be used as a springboard for developing competing views to be tested against data gathered from my fieldwork.

## 2

# THEORISING JUDICIAL CORRUPTION: REVIEW OF THE EMPIRICAL AND THEORETICAL LITERATURE

While there is a lack of substantial theoretical discourse on the causes of judicial corruption in the context of organised crime, there is some valuable empirical work from which this thesis draws. There is also a more general theoretical literature on corruption and organised crime which is critically discussed.

This chapter is divided into two main parts aiming to set up a cohesive framework that will help illuminate possible reasons for judicial corruption in Albania. In the first section quantitative research shows that judicial corruption is widespread and its causes are explored in the Western Balkans, particularly in Albania. The second section outlines the main features of three theoretical paradigms which might provide the basis for answers to my research questions.

## Organised Crime and Judicial Corruption in the Western Balkans

There are many reasons why organised crime in the Western Balkans has found fertile ground to flourish. First, the geographic position of the Western Balkans places it on the border between East and West. To the east, Turkey is the route to Asia and beyond. To the west, the Western Balkans shares the Adriatic coast with Italy and Greece. Inland, it shares borders with five EU members – Hungary, Slovenia, Greece, Romania and Bulgaria.

The Asian routes of South American cocaine to Western Europe go through the Balkans (see Figure 2)<sup>47</sup> and similarly a majority of Afghan heroin follows the Silk Road from Turkey across the Balkans to Europe (Anastasijevic 2006). Second, the prevalence of illegality and black market activity makes the Western Balkans an attractive place for many EU-based

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<sup>47</sup> Figure 2 shows the paths of criminal activities passing through the Western Balkans. Available at <http://www.seerecon.org/maps/see-map.pdf> [accessed January 20, 2009].

organised crime groups to launder their proceeds. Their activity benefits from the assistance of indigenous criminal circles which help them to integrate illicit profits into legal activities.<sup>48</sup> Third, in stark contrast to many Eastern European countries, which experienced democratic transformation in the late 1980s, events in the Western Balkans have often sparked wars that spread through the region. During recent decades, ethnic wars, poverty, political transition and state collapse provided opportunities for organised crime to mushroom in the Balkan states (Glenny 2008).

**Figure 2 Smuggling Routes Through the Balkans**



Source: International Criminal Threat Assessment.

Organised crime in the Western Balkans has its own characteristics compared to other EU and non-EU organised crime. One of the most distinguishing elements is the misuse of 'ethnicity' as a sensitive issue or as camouflage to exploit the state. According to Williams and Godson (2002:317-318), 'War crimes and organized crimes sometimes have the same perpetrators' and 'competing factions or separatists often resort to criminal behaviour to fund their political struggle'.

In the second war in Kosovo, for example, the Kosovo Liberation Army (KLA) is argued to have taken advantage of this conflict for 'personal enrichment of the members of 15 [of its] clans, allegedly controlling...the drug trade'.<sup>49</sup>

<sup>48</sup> See Europol (2008) 'European Organised Crime Threat Assessment (OCTA) 2008'; available at [http://www.europol.europa.eu/publications/European\\_Organised\\_Crime\\_Threat\\_Assessment\\_\(OCTA\)/OCTA2008.pdf](http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_(OCTA)/OCTA2008.pdf) [accessed January 24, 2009].

<sup>49</sup> See Centre for the Study of Democracy (2003) 'Corruption, Contraband, and Organized Crime in Southeast Europe', Sofia, p.13; available at <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN016997.pdf> [accessed



This use by organised crime of politics for gain may be due to lack of real democratic competitiveness between political parties in a majority of states in the Western Balkans. They use nationalism and ethnicity partitions as voting power to win political elections. Organised crime, which supports political parties financially, uses 'ethnicity to mask its criminal influence' (Stojarová 2007).

What they do, although it might be illegal, is attempt to justify locally while enabling their ethnic political wing to win. Electoral victors run the government and thereby control the judiciary, prosecutions and police forces. Thus, they can offer protection to organised crime. Some scholars argue that the officials also use these institutions against opposing ethnic factions as well as against other ethnic-based organised crime groups while tolerating crime on the part of their own ethnic partisans (Griffiths 1999).

So, the political battle is in fact an ethnic battle where the 'Robin Hoods' of crime can take advantage. The US Department of State in its '2008 Human Rights Report: Macedonia' points to ethnic imbalance as a political concern. It observes that:

'Ethnic imbalance remain[s]...in the police force. At year's end, 20.3 percent of the force consisted of ethnic minorities, short of the government's 25 percent recruiting quota for minority officers. Ethnic Albanians made up 25 percent of the population and constituted approximately 16 percent of the police force. ... [Thus,] ethnic Albanians remained underrepresented in the military and police, especially in the intelligence and counterintelligence agencies, although special efforts were made to recruit qualified minority candidates.'<sup>50</sup>

The position of organised crime in the Western Balkans has been enhanced by the strife of the past 30 years. The UN embargo of the 1990s in the post-Yugoslavian states brought proliferation of arms and goods smuggling. Important arteries through Albania, Romania and Bulgaria revealed that organised crime operated a transnational structure that enabled it to move easily across national borders.<sup>51</sup> In almost all states of the region, traces of political links with organised crime were clearly evident.<sup>52</sup>

In most of the Balkan states, criminal groups, like political parties, are based on ethnicity. For example, in Bosnia Herzegovina, organised crime groups are known from the ethnicity of their membership. Bosnian gangs seldom mix with Serbians. However, these ethnic crime groups sometimes exist at least partly due to politics involving other ethnic factions. In fact, the war period from 1990 to 2000 saw a rise of organised crime all over the Western Balkans (Giatzidis 2007).

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January 25, 2009].

<sup>50</sup> See US Department of State (2008) '2008 Human Rights Report: Macedonia'; available at <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119091.htm> [accessed February 25, 2009].

<sup>51</sup> Centre for the Study of Democracy (2003) 'Corruption, Contraband, and Organized Crime in Southeast Europe', Sofia; available at <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN016997.pdf> [accessed April 20, 2009].

<sup>52</sup> Ibid, pp.11-15.

In recent decades, almost all countries in the region have begun to reform their criminal justice systems – introducing contemporary laws and asking for Western experience. However, the process has often been distorted because of elite participation in organised crime, which, some argue, enabled capture of state institutions including the judiciary. Politicians that tried hard to break the system paid with their life. In 2003, Serbian Prime Minister Zoran Djindjic initiated a set of important judicial reforms to curb organised crime and corruption. In early January 2003, he ordered that the head of secret police and Minister of Defence be removed. Just before parliamentary approval of these electoral judicial reforms, Djindjic was assassinated by a post-Serbian War ‘Zemun’ mafia gang on March 12, 2003 (Vejvoda 2004).<sup>53</sup>

Several organised criminal groups such as the ‘Zemun’, ‘Red Berets’ or ‘Scorpions’ survived in Serbia through the Milosevic regime and after. One of the key sources of this power is believed to have been their strong ties to old elites which still retained power in the Serbian administration (Anastasijevic 2006). This may also explain why a successful presiding judge of the Serbian Chamber for War Crimes in the ‘Scorpions’ case, Gordana Božilović-Petrović, was removed from the bench right after the decision to convict them in 2007.<sup>54</sup> Though the removal of this judge looks ambiguous what appears crystal clear, in the words of Judge Važić, is that this decision was not based on any ‘inadequate efficiency of her overall performance’.<sup>55</sup>

Similarly, in the Croatian criminal record there is not any significant political or legal move against organised crime groups. Though there are noteworthy legal reforms and organised crime here is less developed than in Serbia, there is much room for improvement.<sup>56</sup> In Croatia, like Serbia, criminal justice is undermined by corrupt officials (Daskalovic 2003). In 2003 the district state attorney of Zagreb was removed from office on charges of accepting bribes from criminal groups in exchange for providing evidence that lessened the threat of conviction for criminals (ibid).

One of the most complicated cases in the Balkans is that of Bosnia Herzegovina. Here, due partly to the Dayton Accord<sup>57</sup> which divided the country based on ethnicities (i.e. Muslim Bosnian, Catholic Croats and Orthodox Christian Serbs) and in part due to other social issues, organised crime is prospering (Zoglin 2005).

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<sup>53</sup> Tran, M. (2007) ‘Killers of Serbian PM given 40 years’ jail’, *The Guardian*, May 23.

<sup>54</sup> Helsinki Committee for Human Rights in Serbia (2007) ‘Self-Isolation, Reality and the Goal’; available at <http://www.helsinki.org.yu/doc/Report2007.pdf> [accessed May 20, 2009].

<sup>55</sup> Ibid, p.263.

<sup>56</sup> See Helsinki Committee (2007) ‘Annual Report on the State of Human Rights in Croatia 2006-2007 by Croatia Helsinki Committee’; available at <http://www.hho.hr/izvjestaji-o-stanju-ljudskih-prava> [accessed February 27, 2009].

<sup>57</sup> See General Framework Agreement for Peace in Bosnia and Herzegovina and Annexes, UN Doc. S/1995/999.

The comment made by the International Crisis Group on Bosnia and Herzegovina in 2002 is breathtaking:

‘Unlike for the majority of law-abiding Bosnians, national discrimination and “ethnic justice” do not apply to smugglers, racketeers, tax evaders, gunrunners, drug dealers, white slavers, and their patrons. These groups rejoice in what remains of old Yugoslavia’s “brotherhood and unity”, doing business across internal and external borders and national or confessional divides. Their community of interest – in getting rich and defying the law – contrasts with the disunity of those who want to uphold the law.’<sup>58</sup>

A thorough reform of the judiciary was imperative for Bosnia Herzegovina (Transcrime Report 2004). Yet, how to do so remained a problem due to poor efficiency and extensive influence of political elites and/or organised crime. It was not until 2003-04 when serious judicial reform came to life. All places in the judiciary were considered vacant and all candidates (i.e. existing and new judges) went through a normal competitive process. As a result, the reform managed to purge the system leaving aside more than 30% of the existing judges and succeeded in balancing ethnic representation within the system.<sup>59</sup> Similarly, the Macedonian judiciary has suffered delays of reforms and extensive corruption. Several cases where judges have abused their positions by mishandling court cases, have been reported even in 2008.<sup>60</sup>

Organised crime in the Western Balkans has progressed significantly and this is seen in their areas of activity which are constantly enlarging, fostering cross-border activities, making up very flexible criminal structures, and, more importantly, investing into the legitimate economy.<sup>61</sup> In other words organised crime in the Western Balkans is becoming more professional, sophisticated and difficult to control. As the 2004 Transcrime on the Western Balkans concludes: ‘Organised crime groups utilise legal entities as shields and as a way to reinvest illicit profits.’<sup>62</sup>

The following section takes stock of the existing empirical literature on judicial corruption and its causes.

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<sup>58</sup> International Crisis Group (2002) ‘Courting Disaster: The Misrule of Law in Bosnia & Herzegovina’, March 25; available at <http://www.crisisgroup.org/home/index.cfm?l=1&id=1497> [accessed May 2009].

<sup>59</sup> American Bar Association (2006) American Bar Association II, Judicial Reforms Index for Bosnia and Herzegovina; available at <http://www.abanet.org/rol/publications/bosnia-jri-2006-eng.pdf> [accessed April 2, 2009].

<sup>60</sup> US Department of State (2008) ‘2008 Human Rights Report: Macedonia’, available at <http://www.state.gov/g/drl/rls/hrrpt/2008/eur/119091.htm> [accessed March 15, 2009].

<sup>61</sup> Transcrime Report (2004) ‘The Contribution of Data Exchange Systems to the Fight Against Organised Crime in the SEE Countries’, Savona, E.U. and F. Curtol ed. , Università Degli Studi Di Trento and Università Cattolica Del Sacro Cuore, p.7.

<sup>62</sup> Ibid.

## Nature of Judicial Corruption

In searching for theoretical literature on the causes of judicial corruption, it becomes clear that such studies are extremely rare. Issues of corruption let alone judicial corruption were almost exclusively the domain of social and political science until 1980 (Rose-Ackerman 1999). Since then economic researchers have begun to draw attention to the financial consequences of corruption (Abed and Gupta 2002). Recently, theoretical work on corruption and public institutions, where its presence is most obvious, are becoming a trend in socio-legal studies.

Empirical findings on corruption are organised in global outlines such as the several global corruption reports by Transparency International (TI) (Hodess 2007). Yet, as mentioned earlier, the emergence of judicial corruption as an elaborated concept in the worldwide academic discourse was not addressed in systematic form until 2007 when TI published *Global Corruption 2007*.

The 2007 TI report emphasises how crucial judicial corruption is as an obstacle to the rapid democratisation of a society. It also identifies various cultural, economic and political facets that are very helpful in unfolding the intricate nature of judicial corruption. However, even this report, despite its contribution to enriching the literature, appears to have lacked deeper theoretical reflection on the issue.

It is worth underlining that judicial corruption is one form of the broader phenomenon of corruption generally (Hossain 2007:xix). All ingredients of general corruption are evident in the corrupt behaviour of judges, prosecutors and police forces. By noting that judicial corruption is part of general corruption, theories of corruption may be drawn on to better elucidate varieties of causes and consequences of corruption in the judiciary. Many analysts have framed general corruption as a way to 'circumvent legal systems' (Buscaglia and Dakolias 1999). Therefore judicial corruption appears to be one particular approach to doing so.

I now explore some corrupting forms used by Albanian organised crime and political elites to circumvent and distort the judiciary there.

## Corrupting Techniques of Albanian Organised Crime and Political Corruption

As mentioned in Chapter 1, techniques used by organised crime in corrupting the judiciary tend to rely on classic forms such as those constituting petty corruption and grand corruption.<sup>63</sup> Bribes and blackmail are common weapons for undermining the judiciary and

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<sup>63</sup> See also Centre for the Study of Democracy (2010) 'Examining the Links between Organised Crime and Corruption', European Commission; available at [http://ec.europa.eu/home-affairs/doc\\_centre/crime/docs/study\\_on\\_links\\_between\\_organised\\_crime\\_and\\_corruption\\_en.pdf](http://ec.europa.eu/home-affairs/doc_centre/crime/docs/study_on_links_between_organised_crime_and_corruption_en.pdf) [accessed February 20, 2012].

controlling its decisions. A repented criminal by the name of Ilir Shllaku wrote in his diary that, during 1994, the court found him not guilty because he lured judges, the prosecutor and his advocate with cash.<sup>64</sup> In 2008 another prosecutor was facing charges of accepting 50,000 euros as a bribe by criminal gangs in order to negotiate with his wife who was the presiding judge of the court dealing with the trial of one of their members.<sup>65</sup> In the same year, the chief prosecutor of the Durrës district withdrew after an inquiry into one of his properties valued at 710,000 euros which he had failed to declare as legally required.<sup>66</sup>

Organised crime in post-communist societies often draws on the tactics of the old communist regimes. These include use of the former secret police, many of whom are now in private policing, to evade detection, provide information, and assist in penetrating legitimate institutions. New political elites, which use ties to the old communist elite, appear especially active in attempting to control the public institutions generally and the system of justice specifically (Austin and Ellison 2009:194; Baze 2010; Zogaj 2009). Many former secret police, members of the notorious communist intelligence service known as 'Sigurimi', were discharged from their official positions during the democratic wave of 1990-97 (Vickers and Pettifer 1997).

However, due to their experience, low cost (as more than two-thirds were jobless) and expertise, many of them were quickly absorbed by organised crime.<sup>67</sup> Their assistance consisted of consultation on technical issues like coordination, secrecy and protection against interceptions.<sup>68</sup> According to Leman and Janssens (2006:233), research on 41 files in human trafficking routes through Albania and Bulgaria shows that 'it appears that in more than 25% of the cases, former intelligence personnel visibly played an important role in the activities of the criminal networks'.

A significant number of former communist prosecutors or judges retain key positions in the hierarchy of the Albanian legal system like the Constitutional Court or General Prosecution Office (Austin and Ellison 2009:193).<sup>69</sup> As a result, under the process of judicial reform, which is a prerequisite of EU and NATO accession, the Albanian government has opened a frontal war against the General Prosecutor's Office and is exerting constant pressure upon the High Court.

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<sup>64</sup> Xhaja, G. (2009) 'What happens with the repented which uncovered crimes of the Fieri's criminal groups?' (Cfare ndodh me te penduarin qe zbardhi krimet e bandave te Fierit?), *Shqiptare Gazette*, February 23.

<sup>65</sup> Cena, A. (2009) 'The prosecutor "middleman" to his judge wife for 50,000 euros' (Prokurori "mik", tek gruaja gjyqtare me 50 mije euro), *Koha Jone Gazette*, February 12.

<sup>66</sup> Korriku, A. (2008) 'Durrës, the head prosecutor withdraws' (Durrës, dorëhiqet kryeprokurori), *Shqiptare Gazette*, November 26.

<sup>67</sup> Europol (2011) 'EU Organised Crime Threat Assessment (OCTA) 2011', April 28, p.29; available at [https://www.europol.europa.eu/sites/default/files/publications/octa\\_2011.pdf](https://www.europol.europa.eu/sites/default/files/publications/octa_2011.pdf) [accessed December 6, 2011].

<sup>68</sup> Raufer, X. (2002) 'At the Heart of the Balkan Chaos: The Albanian Mafia'; available at: [http://www.xavier-raufer.com/english\\_5.php](http://www.xavier-raufer.com/english_5.php) [accessed March 23, 2009].

<sup>69</sup> Peshkepja, G. (2008) 'My pretence for the judges of dictatorship' (Pretenca ime per Gjyqtaret e Diktatures), *Panorama Gazette*, December 24.

There are strong reasons, according to the political opposition, to believe that a new elite headed by Prime Minister Berisha's family control politics and the economy of the country (Baze 2010).<sup>70</sup> For almost two years, Berisha himself has headed actions against the judiciary and prosecution on what appear to be baseless grounds. One result is that former General Prosecutor Theodhori Sollaku was dismissed in 2007. The Albanian Prime Minister has launched a campaign against the new General Prosecutor Ina Rama suggesting that 'the prosecution is not fighting the crime...[and] continues to be strongly politicised'.<sup>71</sup> In fact, Berisha's agenda seems to be a weakening of the Prosecutor's Office and the judiciary's independence.

The precipitating motivations for the Prime Minister's attacks seem to lie mainly in three files involving political figures with apparent links to organised crime. In each case the Prime Minister assailed the prosecutors for alleged politicisation on their part when, in fact, the politicisation appears to have rested with their accuser instead. The cases ultimately illustrate a seeming tendency of the judiciary to dismiss files on organised crime with no action. They have sparked a public outcry for the last several years in Albania. All the files contain elements of strong links between organised crime and the political elite.<sup>72</sup>

The first file relates to corruption allegations against the former Minister of Transport, Mr Lulzim Basha, accused of gross negligence and damaging the state budget with 385 million euros.<sup>73</sup> Berisha backed Basha by considering the decision as a collective act of government rather than of an individual.<sup>74</sup> The second file involves the former Minister of Defence, Fatmir Mediu, who was accused on almost the same grounds as Basha for giving preference to a company to dismantle small arms in a factory located at 'Gerdec' village. Their actions produced a catastrophic explosion on March 15, 2008 where 26 people were killed and 400 houses destroyed. Similar to the remedies in the Basha case, the calculated cost of Mediu's damage reaches stratospheric figures of up to 30 million euros.<sup>75</sup>

In the third case, a known businessman, Damir Fazlic, was pictured by the media and political opposition<sup>76</sup> as a liaison man for the Serbian mafia who launders their criminal

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<sup>70</sup> See the Albanian member of parliament Erion Brace's statements in Delia, E. (2008) 'Army secret service found special forces in drug smuggling' (Shërbimi Informativ i Ushtrisë zbuloi komandot me drogë), *Tirana Observer Gazette*, December 23.

<sup>71</sup> See the comments of Mr Berisha on the TV programme *Opinion*, 'Berisha in front of the Press' (Berisha perballe shtypit), Klan TV, March 12, 2009; available at <http://www.tvklan.tv/emisioni.php?id=262#> [accessed June 20, 2009].

<sup>72</sup> For a summary of these cases see also the Monitoring Report of the Soros Foundation for An Open Society (2008) 'Monitoring Report: Albania in the Stabilization and Association Process'; available at [http://www.soros.al/en/msa2008\\_english.pdf](http://www.soros.al/en/msa2008_english.pdf) [accessed April 5, 2009].

<sup>73</sup> *Tema Gazette* (2009) '20 legal infractions which can send Lulzim Basha behind bars' (20 Shkeljet që Mund të Cojnë në Burg Lulzim Bashën), November 27.

<sup>74</sup> *Shekulli Gazette* (2008) 'Berisha: Is the Government's responsibility and not of Basha's' (Berisha: Përgjegjësia e qeverisë, jo e Bashës), December 1.

<sup>75</sup> Lala, K. (2009) 'Criminal activity of Mediu – the damage of 30 million euros' (Veprimtaria kriminale e Fatmir Mediut, dëmi 30 milionë euro), *Shqiptare Gazette*, March 20.

<sup>76</sup> See the statement of the Socialist Party's representative Erion Brace in *Shqip Gazette* (2008)

proceeds in Albania.<sup>77</sup> According to the media, all legal work for the sale was done by a lawyer with close ties with the daughter of the Prime Minister.<sup>78</sup> It should be mentioned that all these files were closed by Albania courts and only recently the Constitutional Court turned down the decision of the High Court on Mediu and the case will be tried again.<sup>79</sup>

Not surprisingly, the Prosecution Office for Serious Crime has expressed concern about the response of the judiciary to organised crime cases. Extensive organised crime control of the judiciary has been alleged. During 2008 the Prosecution Office for Serious Crimes issued ten sequester orders requesting that assets of several different criminal groups be frozen. Five of them were ruled out by courts of the first districts based on a unified decision of the Supreme Court rendered on January 25, 2007.<sup>80</sup>

Several legal initiatives also initiated by the government in the name of reform also appear questionable. Instead of providing for legal reforms to minimise corruption within the judiciary, they have appeared instead to constitute government attempts to limit the power of the judiciary and prosecution.<sup>81</sup> Therefore the triangle of political elite, organised crime and judicial corruption seems vividly clear in Albania.

Organised crime has become more sophisticated and more cautious. Despite the fact that many organised crime groups have recently gone behind bars, there are sceptical voices which suggest that, though some dangerous but small groups have been stopped, others continue to operate.<sup>82</sup> These are alleged to be more dangerous, organised and politically connected. The chief of the Prosecution Office for Serious Crimes, Olsian Çela, emphasised that:

‘Although some dangerous criminal groups were destroyed, others continue to exist or arise, other groups replace older groups, which may not have the notoriety

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‘Brace: The Prime Minister not only favoured the Bosnian but also the partner of BG&R’ (Braçe: Kryeministri favorizoi jo vetëm boshnjakun, por edhe ortakun e BG&R), November 13.

<sup>77</sup> See several articles in *Tema Gazette* on Damir Fazlic and his possible links with organised crime and politics in the Western Balkans (in Albanian). See *Tema Gazette* (2009) ‘The file of the year: the shadow man of the Prime Minister’s family’ (Dosjet e Vitit, Damir Fazlic, Njeriu Hije i Familjes Kryeministore), December 29.

<sup>78</sup> Ibid.

<sup>79</sup> See decision of the Constitutional Court no.27, May 9, 2012.

<sup>80</sup> Sokolaj, T. (2009) ‘Prosecution Office: The court blocked the investigation of the proceed of crime’ (Prokuroria: Gjykata Bllokoi Hetimin e Pronave te Krimin), *Panorama Gazette*, February 26.

<sup>81</sup> United Kingdom Foreign & Commonwealth Office (2008) ‘Annual Report on Human Rights 2008’, p.54; available at <http://www.fco.gov.uk/resources/en/pdf/pdf15/human-rights-2008> [accessed May 23, 2009].

<sup>82</sup> *Shqip Gazette* (2008) ‘Old Organised Crime Groups are being Replaced by New and More Dangerous Ones’ (Bandat e Vjetra jane duke u Zevendesuar nga te Reja dhe me te Rrezikshme), July 20.

of old ones, but who, ...have new structure of organization and action, are very sophisticated and with a diversity of criminal activities.’<sup>83</sup>

As explained above, organised crime uses several techniques to distort the judiciary in the Western Balkans generally and Albania specifically. Now I turn to the causes of organised crime and its effects on the judiciary. At first it appears that cultural norms may be one such cause. However, we shall see that it is rather the manipulation of those norms that is crucial.

## **Distortion of Cultural and Customary Norms by Albanian Organised Crime**

Albanian society has often been portrayed as violent because of its harsh cultural norms (Arsovska 2008; Doll 2003). While this may be so, what is more important, is the very clever way that organised crime has managed to grip traditional norms of honour and misuse them for criminal purposes. It is thus worth briefly analysing some existing medieval ways of dispute resolution such as the blood feud and ‘Besa’ (‘given word’) to see how organised crime uses them in modern Albania.

Researchers have shown that blood feud was an institution which in the absence of the state has served the family since medieval times as a sort of protection (Rosenthal 1966). It is argued by some scholars that the blood feud or vendetta is in antagonism with social disorder or chaos. Grutzpalk (2002:115) argues that ‘Blood feud makes a society safer than it would be if there was no regulation of violence and its use against others.’ For Weber, blood feud as a tradition was extended from protection to the acquisition of new territory. In occidental cities, vendetta, according to him, was transformed into policing. Theoretically, Weber has drawn parallels between vendetta and public force or political violence. For him, political violence is about ‘territory’ and blood feud was formerly used to protect or seize new territories (Grutzpalk 2002:121).

In Albanian society, the potentially positive social factors surrounding blood feud, are sometimes argued to have been obstructed by another customary practice of honour – the ‘Besa’ (given word or sacred promise, and the respect for guests and friends) (Trnavci 2008; Mustafa and Young 2008). The purpose of Besa is similar to vendetta – the strengthening of family kinship and protection of the society. They differ, however, in that where blood feud is used to restore the honour, Besa gives the right to protection to someone pledged under one’s honour. When vendetta and breach of Besa are in dispute, the disparity of consequences might be huge. This is because Besa implicates many actors such as a host and the guest families. For one breach of Besa the number of victims can be endless (Grutzpalk 2002:118).

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<sup>83</sup> Ibid.



The commonly held view regarding these customary cultural elements is that it is the lack of a modern state whose laws penetrate the society that persuades its people to produce such social regulating norms. What is interesting to explore is how in the case of Albania, organised crime has taken these customary norms out of their social context of coexistence with a state-based rule of law and has transplanted them into their cells' or groups' subcultural codes. For instance, if members of the group made a pledge on Besa, the consequences of any breach would redound to their families. As Raufer (2002) puts it:

'The very pronounced mafia character of the Albanian criminal associations follows equally from the behaviour of its members after an arrest. There is never, even in confidence, any revealing of the features of the group to which they belong. The response is unchanging: my biological family is in danger in Albania.'

The extension of crime's spectre from the criminal unit to the members' families also involves other customary practices like vendetta. As a result, there are more than 800 children virtually imprisoned in their homes for protection as a result of the ongoing blood feuds among families in Albania, especially in the North.<sup>84</sup> It can be predicted that blood feud might help local criminal groups to recruit this contingent. As mentioned earlier, one of the characteristics of Albanian organised crime is violence. It is common that rival criminal groups fight and kill each other. Although killing may be clearly for criminal purposes (e.g. revenge, seizing of illegal markets) leaders of these groups might cunningly expose it in the community as a blood feud. Therefore, family members of the victims, being under social pressure, will automatically get involved in vendetta and this can open ways for organised crime to recruit and integrate them easily in criminal activities. As Shala (2003) concludes:

'We reach the conclusion that the greatest part of the murders [by organised crime] in 1997 are known and registered as blood feud... [I]n fact they are murders caused by revenge [and] hidden under the cover of canon[i.e. Kanun].'

Traditionally Besa is given as a sort of protection for reasons constituted in the customary codes such as the 'Kanun of Leke Dukagjini'.<sup>85</sup> According to this code, there are specific norms to be applied and institutions (e.g. the council of elders) to decide whether there is breach and, if so, whether a penalty is warranted. In other words, what criminals might do can be envisioned metaphorically as a cultural 'money laundering' scheme in which, using 'traditional norms', what is unacceptable is transformed into something else.

What starts as outside the community and its traditions (i.e. Albanian tradition does not accept the pledge of criminals as valid) is cleverly integrated or portrayed in society as a legitimate action on the basis of traditional norms. Criminals take advantage of the erosion

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<sup>84</sup> *Koha Jone Gazette* (2008) 'There are 800 children locked in houses from blood feud' (Jane 800femije qe jetojne te ngjuar nga gjakmarrja), November 20.

<sup>85</sup> The 'Kanun of Leke Dukagjini' is a comprehensive code of law divided into different chapters like Church, Family, Marriage, House, Livestock and Property, Work, Transfer of Property, Spoken Word, Honour, Damages, Law Regarding Crimes, Judicial Law, and Exemptions and Exceptions (Trnavci 2008).

of customary institutions to oversee application of these norms, such as absence of a council of elders, and reshape customary norms according to their own illicit purposes.

Thus, it can be said that it is not the nature of customary norms like Besa and blood feud which cause the problem but their 'modern' interpretation by organised criminal groups for their own interests. The literature suggests that for organised crime, reliance on these customs helps them to survive. The blending of customary laws with criminal purposes makes the groups secretive and difficult to penetrate (Xhudo 1996). Thus, we see how organised crime misused customary norms for purposes of consolidation.

The image of Albanian society, generally, and organised crime, in particular, as violent is pervasive. As to why this is so, Arsovska and Verduyn (2008:243) argue that violence on the part of Albanian organised crime is due to 'conflict of conduct norms' more than any inherent 'culture of violence' or impact of customary laws themselves. They point to 'socio-cultural confusion' as reflected in views on ideologies and values. Further they suggest that 'country, politics, economy, corruption, area of living and sub-cultures played a significant role in shaping these attitudes'.

This argument parallels closely an earlier influential argument made by Cloward and Ohlin (1960) that violence is greatest among youth and gangs when older members are removed from the scene due to death, injury or prison and younger members coming up vie for leadership and turf. In this setting, the authors argue, established norms and agreements are rendered inoperative and violence results.

Another important facet of the power of Albanian organised crime is their division according to the subcultural partitions of the country. In almost all academic rhetoric on Albania, the regional division between north (Gheg) and south (Tosk) has been very central (Doll 2003; Blumi 1998). Of many distinguishing characteristics between these subcultures, the Ghegs differ from Tosks mainly because it is said that they are more attached to customary norms.

However, it is worth highlighting that being supportive of or guided by traditional norms is different from having proper knowledge of the customary code of laws like Kanun of Leke Dukagjini. It is important to differentiate between norms themselves and symbolic traditions that give only a flavour of customary laws like the Kanun. This explains the fact that many blood feud-related crimes have been justified under the name of the Kanun while, in fact, a majority of northern Albanians apparently know little or nothing about the *modus operandi* of this code (Arsovska and Verduyn 2008; Celik and Shkreli 2010). This must be further explored.

In sum, contemporary factors combined with cultural norms seem to be the elements which generate violence in Albanian society. The popular wisdom that violence is a consequence of an Albanian culture of violence is questionable. This kind of statement can only be beneficial to organised crime (Schwandner-Sievers 2008).

# Causes of Judicial Corruption

In this section I briefly discuss some of the causes of judicial corruption. As mentioned earlier, customary norms appear to be playing a significant role in Albania. Some of the most evident influential customary norms suggested by different researchers are ethnicity, ties of kinship and localism. The literature also suggests other organisational and institutional factors of judicial corruption such as poor financial and infrastructure conditions of judges, and low standard of judges' professionalism. The influence of organised crime on judicial corruption is also another significant factor pointed out in this section.

## Ethnicity, Ties of Kinship and Localism

Previously some have argued that organised crime in Albania is caused by an inherent violence in the culture and society. I have qualified that claim and presented evidence to modulate it by pointing to conflict of cultural norms and to cultural appropriation of customary elements by organised crime. Now I explore how ethnicity as well as kinship ties and localism have been associated with organised criminal activity in Albania. With respect to ethnicity, prior research suggests that organised crime uses it as a basis of recruitment for criminal activities that may include judicial corruption. It may facilitate the access of these criminal groups to the judiciary or other enforcement agencies directly (e.g. bribery, extortion) or indirectly (through political ties). As Gatzidis (2007:338) puts it:

‘Organized crime permeates Albania’s power centres at the political and economic levels to such an extent that in 2006 Prime Minister Berisha accused the country’s attorney general of being linked to it, while admitting that whole fields of the state are still under the influence of organized crime.’

In Albania, ethnicity appears to have been used primarily as a bridge to build links between criminal networks at home and Albanian ethnic-minority or diaspora (e.g. Albanians with Kosovo-Albanians or Macedonian Albanians) populations abroad who might be exploited by criminal rings. The FBI has highlighted such links.<sup>86</sup> It may be that common cultural elements make these groups feel safe in terms of their understanding and relations with each other. In contrast with ethnicity, kinship or family ties and localism appear to be causes of judicial corruption.

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<sup>86</sup> According to the FBI, ‘Balkan criminal organizations have been active in the U.S. since the mid-1980s. At first, these organizations were involved in low-level crimes, including bank robberies, ATM burglaries, and home invasions. Later, ethnic Albanians affiliated themselves with the established La Cosa Nostra families in New York, acting as low-level participants. As their communities and presence have become more established, they have expanded to lead and control their own organizations.’ See FBI (2009) ‘Balkan Organized Crime’; available at <http://www.fbi.gov/hq/cid/orgcrime/balkan.htm> [accessed May 19, 2009].

Thus family relations are another factor that may play a role in judicial corruption. They may contribute to reduced efficiency, weakened impartiality or distorted decisions on the part of judges. Relations among actors within the judicial structure can impair its impartiality (Alistar 2007). Threats against family members may also be used to coerce judges to favour a particular party. Family links may also help corrupt judges or solicitors/advocates protect themselves against detection which might otherwise occur through leaked information or overt allegations.

## **Structural and Organisational Factors**

Judicial corruption can also be caused by lack of human resources, poor infrastructure, insufficient number of judges, low budgets, and weak professional standards. It is already echoed by many authors that lack of human resources and poor infrastructure are some other reasons for judicial corruption (Reiling and Hammergren et al. 2007). Weak infrastructure can erode judicial efficiency (Karosanidze and Christensen 2007; Siddiqi 2007). Poor infrastructure means an insufficient environment and facilities for judges to work properly (e.g. lack of court buildings, judicial lockups, prosecution chambers, and spaces for witnesses, the computerisation of records, and supply of documents) (Ford and Seng 2007). If the judiciary operates in a disorganised infrastructure, opportunities for judges to get corrupt will arise. This often happens in poor countries with a large population.<sup>87</sup>

An insufficient number of judges per capita can be another significant contributor to judicial corruption. In a poor region where population is extensively large, like Asia and Pacific, the budget allocated to the judiciary is not enough to cover expenditures. As a result, the number of judges is short and not in a right proportion with the population. In this situation, judges could accept bribes for the time of their case-processing or give preference to parties that provide the most lucrative offers. It should be noted that judges could still be just in the court decision they hand down.<sup>88</sup>

Budget allocation and low remuneration of judges, are argued to be other probable causes for judicial corruption. Low salaries, therefore, could deter bright lawyers and qualified candidates from the judiciary. According to Yang and Ehrichs (2007:49), 'severe under-funding always has an impact on the judiciary as it seeks to supplement its needs from other [illegal] sources'. Unpaid judges will be thus more open to other illegal sources like bribes, to subsidise their financial needs.

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<sup>87</sup> Transparency International India (2007) 'Indolence in India's Judiciary', in Transparency International, *Global Corruption Report 2007:Corruption in Judicial Systems* (Cambridge: Cambridge University Press).

<sup>88</sup> The idea is that here it is the 'case's time-proceeding' which is in the sale and not the court decision.

It should be mentioned however, that these factors are oversimplified. The level of salary can be an open-ended debate and judges might always find excuses on these grounds. On the other hand, salary cannot always be the main attraction for bright candidates. There are other social factors (e.g. quality of life, infrastructure, career, etc.) that might attract intelligent lawyers. Under-financing and low salaries of the judiciary as strong causes for judicial corruption seems questionable (Yang and Ehrichs 2007).

Judicial corruption may also be as a result of weak professional standards and processes for selecting the most adequate candidates. Lack of an organised selection procedure for assessing candidates before they join the bench, could be a factor in judicial corruption (Guarnieri 2007). Lack of substantive training and education for candidate judges also might reduce judicial efficiency and increase corruption. According to Yang and Ehrichs (2007:53) 'The importance of the length and quality of judicial training to combating corruption lies in the capacity of judges to make good decisions and resist incentives to favour particular parties.'

Gender bias in recruiting judge candidates is argued to be a significant cause for judicial corruption. Nyamu-Musembi (2007) argues that 'Gender bias sustains systemic inertia in responding to corrupt practices whose impact falls exclusively or predominantly on women'. She further argues that corrupt networks inside the judiciary could also be based on club-like, male gender relation known in the west as the 'old boy's club'. In most of the developing countries high level judges are mostly males and female judges are mostly employed in lower courts or administration. According to her, this pattern might encourage judicial corruption in form of discrimination for those women judges who ask for promotion (Nyamu-Musembi 2007:127).

In countries where political stability is unsettled, the judiciary may be eroded and the chances for judicial corruption could be high. This is especially evident in countries like Palestine where the peace process is always in question. According to the Palestine Coalition for Accountability and Integrity, in 2007, this conflict contributes strongly to 'corruption, and increases the scope for political interference with judicial decisions'.<sup>89</sup>

Thus, judicial corruption is complex and the arguments as to its causes are diverse. They can be social, political, institutional and even personal. This literature is preliminary and much further research is needed. Yet, it is hard to set out a comprehensive list of the causes of judicial corruption. These factors can be regarded as provisional risk elements. What is important here about these potential contributors to corruption, is that they tend to be found in almost all later developing countries. Despite this particularity, factors that dominate in one country versus another differ. In some countries organisational factors may be more determinant, and in others economic issues could be the main cause.

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<sup>89</sup> Palestinian Coalition for Accountability and Integrity (2007) 'War of Attritions Weakens Palestinian Judiciary', in Transparency International, *Global Corruption Report: Corruption in Judicial Systems* (Cambridge: Cambridge University Press), p.249.

## Impact of Organised Crime on Judicial Corruption

There is a developed literature on judicial independence and its causal link with judicial corruption. Judicial independence asks that the court decision be free from any political, economic and criminal pressure. It means that judges, in the course of their decision, should be influenced only by the law, facts and their rationale (Rios-Figueroa 2006; Rose-Ackerman 2007).

Lack of judicial independence has been seen as one of the main ingredients of judicial corruption in many developing countries, especially in those with a communist past (Ledeneva 2008; Safaraliev 2007; Sticka 2007; Karosanidze and Christensen 2007; Blass 2007; TI Croatia 2007). However, in the following, this study will tackle judicial independence in relation to organised crime. In the Western Balkans, as already explained in the first section, the interplay between judicial corruption and organised crime is strong. When judicial independence is weak, organised crime tends to spread. One of the most important factors in a democracy is judicial independence. Organised crime works insidiously to disrupt judicial independence in order to undermine prosecution.

Thus, the role of judicial independence is crucial in terms of judicial corruption and the fight against organised crime. As mentioned in Chapter 1, Buscaglia and Van Dijk (2003) argue that if the judiciary sustains an accepted independence, despite the prevalence of corruption in other segments of the state, the judiciary retains such a power which is likely to limit the corrosive force of organised crime in society.

Judicial independence is strongly related with the spread of organised crime. Buscaglia and Van Dijk (2003:13) point out that 'independence and integrity of the judiciary was the most important predictor of the extent of organised crime'. Similarly, Van Dijk (2007) finds that there is a positive correlation between the perception of judicial independence and organised crime indices. Countries with weak judicial structures, and in particular those perceived to be highly controlled by the executive, tend to be rated as countries where organised crime is rampant.

In addition, some good indicators of the links between judicial corruption and organised crime were 'procedural complexity and abuses of substantive judicial discretion' (Buscaglia and Van Dijk 2003:12-13). Voigt (2007:297) finds out that 'the higher the complexity of judicial system the higher the expected level of judicial corruption'. So, complex (and even labyrinthine) laws tend to increase the chances of organised crime to corrupt the judiciary. More often in developing countries, complex laws have been used by judges or lawyers as ways to elicit illegal profits. A good illustration of how this scheme works in Zambia is pointed out by Chikalanga, Lungu and Yezi (2007:289):

'poorly trained individuals (some of whom may simply be retired civil servants recommended by traditional leaders) are applying complex laws to difficult facts and have to rely on the competence of lawyers to guide them. In this way, judges are open to manipulation by lawyers seeking the best deal for their clients.'

Where judges are corrupt they further facilitate organised crime. Direct implication of judges in the criminal scheme has been another crucial factor in the relationship between judicial corruption and organised crime. Thus, judges involved in corruption can play a

critical role in the strengthening of organised crime through a variety of means, such as showing leniency towards prosecuted individuals, applying pressure to judicial colleagues or even by becoming a tool in making decisions favourable to one criminal group against the other (Della Porta 2001; Menéndez 2007).

To put it differently, a corrupt judge might turn into a part-time employee working for the purposes of organised crime. This makes it hard to differentiate when they start working for organised crime and when they stop. As Albanese (2000:411) rightly highlights, it is difficult sometimes to distinguish between organised crime and criminal activity: 'for example official misconduct by government officials, obstruction of justice and commercial bribery are all types of [illegal]...behaviour [engaged in for different reasons by both types of offenders (corrupt judges and criminals)]'.

As mentioned in Chapter 1, judicial corruption can thus be used by organised crime as an 'insurance policy' in case other means of security fail. This is because the judiciary is the last resort for evading punishment, and as a result organised crime will continually attempt to corrupt and distort the judiciary. A good example can be drawn from the Italian judicial reform of the early 1990s, called 'the clean hands'. In this period, many otherwise successful judicial reforms were obstructed by political elites and the mafia. This demonstrates how organised crime in concert with political elites and the mafia can distort judicial independence. It shows further how they can break any attempt by reformers to hamper the impact of corruption and organised crime in the judiciary (Della Porta 2001).

Complicated, expensive court procedures and inefficient criminal justice might push people to rely on criminals for help in expediting or resolving their disputes (Gambetta 1993). One of the most important services by mafia to private enterprise is the collection of delayed debts, often made initially at extortionate rates of interest (shark loans). Lengthy procedures and inefficiency of law enforcement agencies in collecting overdue liabilities in time are other openings for the mafia to become involved in this 'business'.

As Gambetta (1993:171) points out, in the words of Judge Giovanni Falcone: due to the inefficiency of the courts, 'it is common to turn [rely on]...to the local man of honour'. In this respect, the mafia may emerge as a quasi-government in some areas. Organised crime, then, has another strong reason to corrupt the judiciary – not only for security but also for profit maximisation purposes. A strong judiciary will not only erode organised crime but at the same time it can also thwart its relation with private enterprises.

As explained above, there are several causes which might bring about judicial corruption. The complexity of causes shows how intricate this phenomenon is. Now let me turn to the theoretical literature to see what help it can offer in understanding the roots of judicial corruption in the Western Balkans generally and Albania in particular.

# Theoretical Analytical Framework

The next step in explaining judicial corruption and its resilience in the face of reforms takes us to theory. Having examined the empirical literature to see how different authors have tried so far to explain judicial corruption, I now ask what theories have been or might be drawn on to look for explanations.

Though there is a lack of a substantial theoretical discourse on the causes of judicial corruption in the context of organised crime, there are various theories explaining corruption and organised crime more generally which can be adapted for this project. Therefore, three lines of theoretical argument are examined: Economic theory, Social control theory, and Democratic legitimisation theory. These will be used, together with my empirical findings, as a springboard for generating explanations of my data gathered from my fieldwork.

## Economic Theories of Judicial Corruption

There is a connection between theories of economy and theories of law. As Cooter and Rubinfeld (1989:1068) put it, 'the "reasonable man" of the law is not very different from the "rational man" of economics'. In both cases, the 'reasoning person' is used as a heuristic device.

Some early analyses have portrayed corruption as a 'lubricant' to an economy constrained by bureaucracy (Lui 1985). Thus, for these analysts, corruption was an extra-legal instrument that helps bypass red tape barriers and allows individual or group admission to decision-making processes (Leff 1964; Back and Maher 1986; Leite and Weidemann 2002; Dreher and Gassebner 2007). Another argument is that bribes consolidate political party relationships. In developing societies, according to Leys (1965), a bribe plays the political role of money which is to 'cement' social network relations within the political party.

According to Huntington (1968), corruption is part of the modernisation process. Every society in its early stages of modernisation, he argues, has seen extensive corruption. Huntington depicts this as the result of new emerging (modern) norms that conflict with traditional practices. What traditional norms called 'normal', modern social norms term 'corruption'. Thus corruption for Huntington is a modern phenomenon that results when new norms of legal impartiality are applied to old customs rather than something negative that arises in the society itself (ibid:254).

Having shown some positive approaches to the functions of corruption, let us now look at some other economic theorists who argue just the opposite.

In most contemporary economic discourse, corruption has been framed as diabolic in terms of its consequences for economic and political development. In general, corruption is



argued to: reduce the efficiency of markets and legitimacy of democracy (Tanzi 1998); subvert investments and distort income distribution (Tanzi and Davoodi 2001); misallocate labour, capital and talent in the economy (Dabla-Norris and Wade 2002); corrode natural resources (Leite and Weidemann 2002); impair economic growth (Mauro 1995); increase poverty by generating income inequality (Gupta, Davoodi and Alonso-Terme 2002); and pave the way for organised crime to infiltrate public institutions and legitimate businesses (Rose-Ackerman 1999).

As to where corruption originates, a variety of analyses have pointed to public institutions as key factors in its appearance and its magnitude (Lambsdorff 1999, 2007). Weak public institutions open gaps for corruption to entrench itself in society. Schneider and Enste (2000) find that poor services and infrastructures of public administration have a positive correlation with the rise of a shadow economy. Tanzi (1998) argues that institutional behaviour and level of corruption are very sensitive to government interventions into markets. These analyses suggest that more regulation risks inflicting corruption on public institutions as the bargaining chances to bypass government rules or laws increase to the benefit of bureaucrats. Complex bureaucracies also introduce additional procedures and, as a result of the time consumed on the process, tend to be very expensive. Therefore, people find it cheaper to offset the price of time-consuming proceedings with a bribe.

All services of public institutions are products generated by public demand and, as such, lack of supply may have significant consequences for their value. Yet some of them, like court decisions on criminal cases, are unique and there is no other competitive market to curb the demand or price. Therefore, it is the bureaucrat, which in the case of judicial corruption is the judge, who holds the ownership (or discretionary control) of the service. It is he or she who decides the quality, quantity and timing of the service as well as, especially, the identity of the beneficiary (Rose-Ackerman 1999). The possibility for officials to create scarcity by managing the flow of a product through means such as delaying approvals or labyrinthine procedures not only create openings for possible bribes but also make it very difficult to prove whether the behaviour is corrupt or not (ibid:14-15).

Wage policy, according to Van Rijckeghem and Weder (2001), is another significant factor in the interrelations between corruption and public institutions. Public officials with reasonable remuneration will be less inclined, they suggest, to accept bribes as this can result in losing a lucrative job and other future privileges such as a pension or a good position in the private sector. In the case of judges, the cost of a bad reputation might be even higher than the loss of a job. The authors also emphasise that the wage policy has another immediate impact on the bureaucracy and the rule of law (ibid:74).

From an economic standpoint, judicial corruption has been perceived among other types of corruption to hamper economic growth. Corruption of the judiciary prevents economic development and risks market stability by increasing the cost of interpretation and enforcement of laws (Buscaglia 2001). As a healthy economy is primarily based on a free market, private business, foreign investments and efficient public institutions, a fair judiciary in economic terms promotes market stability. It also precludes exploitation by undue pressures (e.g. politics, criminal rings and monopolies).

In a comprehensive approach, Buscaglia (2001) incorporates most of the above economic arguments under what he terms the 'market-power' economic approach to the judiciary.

He argues that: concentration of power in the hands of a few; complex procedures and lack of transparency; uncertainty regarding legal doctrine; lack of alternative dispute resolution; and collusive behaviour among parties looking for legal or illegal services from a public agency are all components of a weakly performing institution (ibid:4).

Analysis of this interrelation of institutional performance with judicial corruption has been extended by Voigt (2007) through an economic lens. The marginal profits of judges' corrupt behaviour depend, he argues, on the balance between the utility of this behaviour and the cost of being detected or sentenced (ibid:296). This is a basic deterrence approach. Then Voigt introduces the same institutional elements, with only minor differences, as Buscaglia and Dakolias (1999) do above in the form of variables. Voigt highlights, however, that 'this result is influenced by other factors' too (2007:299).

Voigt finds that economic standards (i.e. measured as per capita income) and the openness of the economy could account for up to 46% of the judicial corruption in a society. In an interesting counterpoint to Buscaglia and Dakolias (1999), and Buscaglia (2001) which place procedural complexity and transparency at the top of their lists of institutional conditions that are strong indicators for judicial corruption, Voigt (2007) argues that good governance practices that may add some complexity do not have a corruption enhancing effect. He states: 'neither the obligation to publish court decisions, nor the level of checks and balances nor the existence of anti-corruption commissions has a significant impact on the level of corruption within the judiciary' (2007:296).

The findings of Voigt (2007) are in line with an earlier analytical model by Leite and Weidemann (2002) which shows that the developmental stage of the economy in a society is crucial to the effectiveness of anti-corruption policies such as institution-building and law enforcement. They contend that institution-building (e.g. improvements in monitoring technology) 'tend[s] to be more effective in less developed countries while stricter enforcement (e.g. increase of penalties) tends to be more effective in more developed countries' (2002:192).

It is argued that there are many other factors, under such circumstances, which may determine whether someone engages in criminal activity and these could also be ethical or moral. However, qualitative research has shown quite persuasively that financial earnings are a strong impetus for criminal behaviour in cases where the profit of crime is higher than the cost of conviction and punishment (Becker 1993:390).

If we turn for a moment from primary causes of judicial corruption to secondary ones, there is a literature that applies cost-benefit analysis techniques to the issue of level of enforcement. This work starts from the assumption that the quality of a court decision often depends on efficient enforcement. Becker and Stigler (1974) point to four variables which could determine the quality of law enforcement behaviour.

According to Becker and Stigler (1974), the first is the 'investigation cost' to assure the optimum level of law enforcement integrity. The better the record of the enforcer, the higher the costs of corrupt behaviour expectation. Second, the balance between the profits generated by law enforcers in enforcing laws compared with incomes produced by criminals in violating the laws exerts an impact. To the extent that legal returns are exceeded by proceeds of crime, corruption will be more likely. Third, the 'temporal pattern of violations increases the costs as it is difficult to bribe or even intimidate the enforcers

who would be involved in a non-repetitive violation' (ibid:4). This is a difficult variable to measure since it is hard to establish a bench mark for costs unless the officials have a crime history. Fourth, if the outcome of a law violation includes a victim, the quality of enforcement is higher because 'victims have a stake in apprehending violators' and this may reduce the cost of enforcement (ibid:5).

All the above-mentioned variables might be applicable in anticipating the cost of any attempts to bribe a judge. This requires, however, precise approximations of costs regarding the judge's integrity; the balance between profits resulting from a fair court decision and those from the violation of laws; and, the number of victims related to the consequence of the court decision.

Usually, before going to the court, litigated parties attempt to solve their dispute in a private manner if the cost of the private settlement is lower than that of the trial. This can be an alternative to attempts to corrupt the judge. The main factor distinguished by Cooter and Rubinfeld (1989) to favour private settlement over trial is the uncertainty of the trial process. Judicial corruption may be attractive to some litigants in that it can help to reverse this costly factor (i.e. uncertainty). It may create a greater sense of security but it may also push parties to other extra-legal means (e.g. the council of elders which operate under Kanun of Leke Dukagjini) which might prove inexpensive relative to trial or court.

What judicial corruption does is to create a 'private market' for dispute resolution. One result, if the consequences are not popularly accepted, may be to encourage people to return to customary norm enforcement. If so, this could hinder advancement of the rule of law (Cooter and Rubinfeld 1989:1093). While the quality of law may be good in many cases before the court, corruption in some cases can exert a strong effect. An inefficient or distorted law, fails to distribute legal entitlements rightly. Thus, as result, 'the more someone values a contested legal entitlement, the more that party will be prepared to spend on litigation [or other costs such as bribes] to obtain it' (ibid:1092).

In many post-communist European countries judges promulgate complex laws and proceedings, as do the legislatures, with an eye to the idea that in the future, when sitting as judges or working as private advocates, they will sustain a monopoly over legal knowledge. This gives them effective ownership of society's entitlement-distribution function through being those who alone can wield these laws (Karklins 2005).

Thus, the economic theories above outline a number of factors which could explain the causes of judicial corruption such as the economic level of the society (Leite and Weidemann; Voigt 2007); efficiency of law (Cooter and Rubinfeld 1989; Karklins 2005). organisational structures and behavioural patterns (Buscaglia and Dakolias 1999; Lambsdorff 1999); concentration of power and unbalanced supply of public decisions (Buscaglia 2001; Rose-Ackerman 1999); standards of service and infrastructure of public institutions (Shneider and Enste 2000); complex procedures (Tanzi 1998); quality of law and quality of law enforcement agencies' behaviour (Becker and Stigler 1974); and the level of wages (Becker 1993; Van Rijckeghem and Weder 2001; Dabla-Norris 2002).

## Social Control Theories

Social control theory contrasts with economic theory (described above) in terms of the explanation it offers for the causes of delinquency and crime. In general, economic theories rely on profit-loss analysis of the criminal, economic standards of the society and institutional performance as core factors for corruption. Social control theory, however, focuses on other elements such as the power of social networks and their norms to control the behaviour of individuals or groups. Thus, social control theory focuses on both the institutional and individual factors that make people succumb to criminal behaviour.

Under social control theory, we are all envisioned as having the capacity for crime. What is interesting is why we do not all do it. One answer is that there are certain cultural norms ingrained in us by society that are absorbed as we develop. However, the proponents of the theory challenge the concept of 'natural conformity' explaining that there are other factors, namely institutions and networks of social control, which have strong influences on this social adaptation like teachers, parents, priests or similar sorts of social influencers.

Because conformity cannot be taken for granted, nonconformity such as crime and delinquency is to be expected when social control is less than completely effective (Lilly, Cullen and Ball 1995). Key questions could be raised under the auspices of social control theory which might be applicable to judicial corruption, such as what forces constrain most judges, prosecutors or other law enforcement officials to conform to the law? What goes wrong that enables corruption?

In the following, I will explore different kinds of social controls. Prior to that, it is important to emphasise, however, that the Western Balkans has gone through a difficult period of wars and political changes in the last 20 years. Thus, the modernisation wave that affected Europe and America during the 19<sup>th</sup> century is now influencing the 21<sup>st</sup> century Western Balkans. Similar social and economic factors in the Western Balkans – like rapid change of the political system, fast urbanisation and massive transformation of demography, influence of technology and new cultural approaches – are taking place as social consequences produced by industrial revolution as occurred earlier in the West. For these reasons, it seems appropriate to start our look at control theory from Durkheim's (1897/1951) analysis.

Social control theory has roots in Durkheim's (1951) pioneering work which argued that lack of social solidarity is a main source of crime. According to Durkheim, who was affected by social distortion during the 19<sup>th</sup> century European industrialisation process, traditional family-type coexistence was replaced by greater individualism. Social solidarity based on similarity of people's viewpoints and life experiences was disrupted as market activity made them more specialised and, thus, unique. Though people are still linked by interdependence, the strong religiously inspired social cohesion of earlier times faded. Thus, Durkheim points to an historical weakening of the power of control exerted by society's institutions.

Social control theory argues that most restraint on our behaviour is exerted by norms and constraints embodied in a web of relationships including those of family and everyday life. If these social networks are disrupted and weakened, social disorganisation tends to arise.

As a result, institutions tend to break down. Durkheim refers to the resulting normlessness, which weakens society's regulatory capacity, as 'anomie'.<sup>90</sup> Conversely, if solidarity of society or a subgroup becomes too strong, it can apply very intense control and potentially could even overwhelm the individual's capacity for choice.

For Durkheim solidarity has two functions: integration and regulation. Integration creates attachment to the group and inculcates the cognitive orientation and beliefs of the group through a process of socialisation. This empowers the society to shape the actions of its members through regulation. Their combined effect is to effectively guide individual behaviour by collective social norms (Durkheim 1951:209-214). Thus, delinquent behaviour can erupt when external governing social norms are not internalised by members of the society and also when institutions or social groups are incapable or otherwise fail to enforce these norms and related rules effectively (Reiss 1949).

The Chicago School (1920) drew on Durkheim to articulate possible causes of social control disruption. Modernisation according to Wirth (1938), a prominent representative of Chicago School, affected even the family which is prime among the social control groups. In general, people's lives differentiated though they still need to rely on one another. This greater autonomy may produce an internal cognitive confusion for individuals and an external social disorganisation for society, thus corroding social control (Lilly, Cullen and Ball 1995:80).

Social control may be exerted personally (Reiss 1949), by family or other public and private institutions (Nye 1958). Some theorists maintain that it is the individuals themselves who have the key role in controlling their behaviour. Reckless (1967) argued that containment processes are at work. They depend on 'pushes and pulls'. 'Pushes' are personal factors like negative reactions to family problems, dislike of one's work place, poverty, lack of life chances and so forth. On the other hand, 'pulls' are more social factors which pull the person to criminal action like illegitimate opportunities and delinquent subcultures (Reckless 1967:467). Both pushes and pulls can overcome an individual's internalised norms and self-control.

Continuing on the theme that the issue is not why some commit crime but rather why most other members of the same society with the same subcultural components do not, Sykes and Matza explore the techniques people use to quiet conscience, which is the internalised voice of social control, to allow them to commit crime? Sykes and Matza's answer to this question is those who commit crime develop 'techniques of neutralisation' that let them convince themselves what they are doing is not really wrong (1957:664).

For Sykes and Matza (1957) neutralisation does not constitute a permanent rejection of social norms but only a temporary abatement (Lilly, Cullen and Ball 1995:90). They emphasise an important assumption which might be helpful in understanding judges' neutralising techniques. Sykes and Matza explain that these techniques, or justifications of deviance, will be 'more readily seized by segments of society for whom a discrepancy between common social ideals and social practice is most apparent' (1957:669).

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<sup>90</sup> Durkheim argued that the rise of markets and industrialisation in the West had historically created an ongoing anomic condition.

In emerging democracies like those in the Western Balkans, where many political ideals are transplanted from the West, citizens, including judges, may see the norms as non-indigenous and foreign. This could be a basis for convincing oneself that the norms are not justifiable. Alternately, organised crime groups could try to persuade a judge that the modern laws are an affront to regional and ethnic customs.

Thus, 'neutralisation techniques' could come into play to produce deviance. However, both authors admit that this approach (i.e. neutralising techniques) has its weaknesses, as the argument made relies more on juvenile age rather than on the mentality of the mature person as would characterise most of the judges active in the courts. In addition, there is lack of good data on the distribution of neutralisation techniques 'as operative patterns by age, sex, social class, ethnic group, etc' (Sykes and Matza 1957:669).

Matza (1964) expands the neutralisation techniques in what he calls 'drift theory'. This rationale of 'drifting' is not so different from the 'pulls' and 'pushes' of Reckless (1967). As Matza states, 'Drifting stands midway between freedom and control'; 'drifting is a motion guided gently by underlying influences'; 'drift is a gradual process unperceived by the actor'; '[drifting] is loosening of social controls' (1964:28-29). Drifting happens where personal neutralisation techniques are facilitated by the neutralising activity of authorities which 'represent moral order' (Lilly, Cullen and Ball 1995:90).

Unlike the majority of control theories which point to lack of internalised social norms, Hirschi (1969) developed two other mechanisms of social control: social bonds and the constructive rationale of the delinquent to decide on his engagement in criminal behaviour. For Hirschi, social control entailed not the ability to internalise social norms but the strength to bond with social groups which, according to him, were family, education, marriage, peers, gangs, church, social network and the like. These groups then exert an influence of control over the individual that restrains her or him from crime. Hirschi states that 'deviant behaviour occurs when the bond of the individual to society is weak or broken' (2001:xviii).

In a different prospect Cohen argues that social groups, which lack the possibility to integrate into the higher levels of society because this is deprived by the upper class, may form their own subculture to generate the necessary power to make integration possible (Jones 2006:179). Cohen's approach of 'status deprivation' can be helpful to explore the subculture of judges and how this leads to judicial corruption.

In applying social control theory to the historical experience of state formation in Albania, one must recognise that foreign norms were repeatedly introduced by overseas powers who were governing in the country. From the Ottoman Empire, to a monarchy using French law, then the invading fascist occupiers, followed by a communist regime and now democratic structures of governance, ideas of law changed constantly. Thus, the rapidly changing governing systems may have come and gone too quickly to mesh with the solidarity of traditional social groups.

Each new government produced its own social networks of control and attacked ones associated with those formerly in power. The norms they attempted to introduce through public institutions seem at best to have taken partial hold. Conflicting social networks destabilised social control and produced social disorganisation (Sutherland 1934). Normlessness or 'anomie' may have resulted. This appears to have thrown most citizens

back repeatedly on traditional social groups for solidarity and regulation (Doll 2003). Thus, family and kinship ties as well as customary norms have retained exceptional strength despite modernisation – a situation that appears to have created opportunities for corruption, generally, and judicial corruption, in particular.

The pre-eminence of traditional familial solidarity appears to have given kinship and village/regional ties special importance in politics. It may generate clientelism or politicisation of subcultural divisions. In Albania this appears to have taken the form of 'Krahinizem' (or 'localism'). Under this system, policymakers tend to appoint and favour candidates for positions who are from their own family, locality and region in order to assure certainty of rapport and loyalty (Wahler 2004). Voters also favour candidates from their own locality.<sup>91</sup> Appointment of judges, not on merit but on Krahinizem, might subvert court integrity and raise conflicts of interest for judges. Pressure may be exerted to base decisions on Krahinizem and not on criteria stipulated in law. Thus, unusually strong local solidarity and breakdown of national civic cohesion may both have contributed to problems of social control.

Social control theories appear to have been influenced by several historical and technological developments in Western society and their impact on social solidarity (Durkheim 1957). It can be argued, as mentioned above, that similar factors are affecting the Western Balkans today. However, it should be underlined that there are different ideological and cultural ingredients involved at different times and in different societies (e.g. industrialising West v. post-communist Western Balkans today). Because of these factors, social control theories might need to be adapted for application to non-Western societies. Therefore the factors contributing to weakened social control in Albania might differ slightly from the classic formulation. In addition, these theories are strongly focused on the individual's perception of crime rather than that of social groups.

## **The Theory of Democratic Legitimation**

The theory of democratic legitimation argues that to achieve valid law in modern society the law-making process must unfold democratically. Jurgen Habermas refers to these democratic conditions as those of the ideal speech situation. He contends that law must be created through discussion between all parties rationally and without respect to power or elite advantage: non-coercively and with commitment to resolution (Habermas 1998b). Rights are key because they establish the conditions of free discourse vital to such democratic politics. Deliberative democratic politics unfold, according to this model, with

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<sup>91</sup> The political mainstream in Albania is controlled by two major political parties which usually divide their votes according to the subcultural divisions. Thus the Socialist Party is more successful in the southern part of Albania (Tosk) and the Democratic Party in the northern region (Gheg). Therefore the so-called 'Krahinizem', a kind of clan based on family or local relations, is an important factor in the appointment of public officials. In this context the selection of judges based on 'Krahinizem' and not on merits could open gaps for judicial corruption.

an eye to the good of society as a whole (Shapiro 2003). Social norms will tend to be reflected in law. Law, thus made, will tend to be accepted as legitimate.

In Albania, while the forms of democracy are embraced, there remains nonetheless a democratic deficit. The Constitution was largely adapted from those of European civil law states, especially France and Italy (Toro 2001). The initial document was accepted by participatory public referendum. Subsequent amendments were approved, however, by just a legislative majority without popular participation so that local norms appear to have been less than fully reflected in those laws. Implementation may introduce further discrepancy, as shown in chapter 1 with the example of the politicisation of the law of lustration. Some conventional laws are also adapted from those of the EU as a precondition for membership. This transplantation of law may have produced a situation where the relation of enacted law to local norms is tenuous. Habermas (1998b) argues that any or all of these conditions that create a gap between laws and norms may contribute to produce a crisis of legitimisation.

Conflicting networks may also struggle for control – thus disrupting equal access to law-making and institutions. This can give rise to organised crime which can compete with the system of justice and turn people to claim protection of their property rights from the Mafia (Gambetta 1993; Varese 2010). Albanian elites also have tended in recent decades to attempt to monopolise power (Vickers and Pettifer 2007). Powerful groups in Albania also use law-making to attack and weaken their adversaries (Austin and Ellison 2008). Many laws relating to the independence of the judiciary and to the impartiality of prosecution and law enforcement can in this way be politicised. Equally, access to justice may be undermined. Law-making may also be distorted by powerful factions to disadvantage political opponents. Democratic accountability and transparency can be weakened and separation of powers to provide checks and balances disrupted. The extent of politicisation in Albania is evidenced by a 2008 survey which concluded that recent violence may be at least partially a reaction to perceived social injustice (Arsovska and Verduyn 2008).

If laws are being imported and law-making is politicised, democratic transition from the communist regime has also occurred at such a rapid pace of change that initiatives to establish a more democratic process and to build bridges between laws and local social norms appear to have occurred only partially at best. Thus, institutions may have lost popular acceptance and, thus, legitimation. Laws may be seen as existing for the elites and subject to ‘rent seeking’ rather than as democratically accountable.<sup>92</sup> Habermas argues that, under these conditions, the state may tend to begin to govern through surveillance, control and policing rather than through participatory democratic dialogue and accountability (Rasmussen 1996). This emphasis on control can create openings for misuse of discretion which leads to corruption. It may produce differences in treatment between the powerful and others or between rural and urban peoples. Weakened deliberative politics may enable capture of the judiciary by powerful elites, corrode the confidence of the masses and weaken their ability to resist organised crime (Waldman 2001).

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<sup>92</sup> See the criticism of the process of recent constitutional amendments by former Albanian judge in the Court of Strasbourg, Judge Kristaq Traja, in *Panorama Gazette*, (2008) ‘Kristaq Traja: Was referendum required for the election code’ (Kristaq Traja: Duhej Referendum per Kodin Zgjedhor), November 24.



Amidst rapid change, new norms may also conflict with old. Culture conflict theory argues that differences in norms between social groups may lead the less powerful to be depicted as deviant and may generate conflict (Sellin 1938; Sutherland, Cressey and Luckenbill 1992; Miller, Grødeland and Koshechkina 2001). In Albania, the legacy of successive occupying regimes and Western influence has introduced procedures for dispute resolution that are very different from the traditional schemes of everyday life (Arsovska 2008).

Understanding of formal law on the Western state model as well as its acceptance by much of the public is limited. People do not automatically grasp the laws and institutions transplanted from overseas and they may feel more comfortable with indigenous customary law such as the Kanun of Leke Dukagjini (Durham 1994). The Kanun is used as a basis for justifying, sometime falsely, extra-legal modes of dispute resolution such as blood feud and enforcement. This may produce a dichotomy in the approach to law between urban and rural areas, between generations and between those educated and those not (Mustafa and Young 2008).

The circumstances we have been describing may create a situation of 'power-distance' between public institutions and the citizenry. Power distance refers to 'the extent to which the less powerful members of institutions and organizations within a country expect and accept that power is distributed unequally' (Hofstede 2003:156). To the extent that Albania is a high power-distance country, it may suggest elite control, though not necessarily for deviant purposes, and unequal access to 'justice'. This too could strengthen organised crime.

To conclude, economic theories approach corruption in the light of financial pragmatism, whether as an individualistic choice in the case of petty corruption (e.g. bribing of judges or prosecutors) or in terms of organisational behaviour (e.g. lack of transparency and accountability of courts). It underlines that it is financial stimulus and the conditions that allow it to be illicitly acted upon that leads a judge or judiciary to corruption. This theory is helpful in considering poor infrastructure and financial constraints as conditions for judicial corruption. This theory can also be helpful in understanding why judicial corruption has kept increasing in the last decade. It may also help to consider the influence of competition for bribes among different levels of court (i.e. first instance, Appeal and High Court). Economic theories may also help to explain whether the increase of judicial corruption makes organised crime more or less competitive in the informal market of property rights' protection and distribution.

We have also seen that crime and deviance can arise when social control is either too strong or too weak. Rapid historical changes of governing laws and institutions in Albania have made the understanding and acceptance of successive legal systems a challenge. Some argue that institutional breakdown has resulted.

Therefore social control theory helps to consider that rapid succession or disruption of regimes, breakdown of legal institutions and a lack of consolidated democratic legal culture might make judicial corruption more likely. I also showed that Albanian society is socially based on family ties and protection of kinship. As a result, kinship links or regional networks are seen as safer institutions to be trusted for conflict resolution than public ones.

Extremely high levels of customary solidarity along with kinship, regional and local loyalties provide an alternative to the formal mechanisms of the modern state. Judges may give preference to someone from their region or people turn to customary mechanisms to work out their differences. Judges may be appointed on the basis of their regional background rather than merit, with an understanding of reciprocity for this clientelism to follow. Shared loyalties between a judge and one or more parties to litigation may also distort the decision-making process. Social control theories could also help to find out the subculture of judges and probe its patterns. It may also help to understand judges' justifications for submitting to subculture.

In my analysis of Albania through the lens of Democratic legitimization, several 'democratic deficits' have been highlighted. Many important laws are transplanted from overseas in a vacuum of public discourse. This theory would argue that for this reason a public sphere and political discourse from civil society is weak or absent. Many scholars argue that if laws do not democratically unfold in society their legitimacy may be undermined and society's trust in public institutions eroded.

So this theory may help to explain the implication of legitimacy of laws and judicial reforms to the public's trust of courts. In addition to problems of legitimization, this may enhance the perceived distance between the powerful and the weak members of society.

Thus this theory may also help to understand the inertia of society toward judicial corruption and the decrease of social pressure toward corruption. It may also shed light on the interplay of the judiciary with the political elite with respect to government control. Today many attempts for an independent judiciary are propounded on the basis of more freedom of the courts from politics.

This raises the thorny question of how democratic accountability of the judiciary is possible without succumbing to its politicisation (Rose-Ackerman 2007). Therefore judges in Albania, like those elsewhere in the Western Balkans, are organised in their own organisation – producing their own codes of conduct and urging more self-administration of the courts. Is this attempt to enhance the independence of Albanian judges a step towards democratising the Albanian system of justice, or is it a backward step to lack of transparency and accountability of the judiciary and the prosecution?

And finally, all of the above-mentioned theories provide interesting and conflicting conditions on which this study can focus in finding answers for research questions. Seeking in this section to carve out some ideas about the reasons for judicial corruption in the context of organised crime in Albania, my project moves next to specify the methodology that will guide the fieldwork.

## RESEARCH METHODOLOGY

Researching judicial corruption in the context of organised crime in Albania involved several challenges which I had to consider before going on to do the fieldwork. Albania is a post-communist country, yet still in the process of political struggle.<sup>93</sup> Corruption is widespread in public institutions and people are reluctant to be interviewed about sensitive issues such as corruption or organised crime. There exist serious concerns that any disclosure may bring dangers to life or career. In a relatively closed society with a small population personal ties are strong and information is easily shared. Interviewees may be quickly identifiable or exposed as sources of information. In Albania the role of friendship ties and family relations are very important so respondents may avoid talking about issues which may reveal facts that could put their friends or colleagues at risk (Arsovska 2008; Doll 2003; Schwandner-Sievers 2008; de Waal 2005).

Previous research on corruption and organised crime conducted in developing countries has suggested that often public officials like judges, prosecutors, police or politicians are reluctant to cooperate (Arsovska 2008; Ghana Integrity Initiative Report on Judicial Corruption 2007). The procedures for accessing public institutions and documents are also very complex. Although it appears that laws which allow public access to official documents exist, gaining access is very complicated and time-consuming. Often documents are not kept in order or have simply disappeared. Typically, studies of post-communist corruption show that prior and current political parties tend to pursue particularistic policies and strategies to control and manage public documents (Gryzmala-Busse 2007; Karklins 2005). Some analysts say that the concealment, loss or destruction of official documents in many post-communist governments has been instrumental for the political elite in disguising the traces of their public official involvement in corruption or other criminal activities (Karklins 2005:19; Lawson and Saltmarshe 2000).

In addition, the lack of previous research on judicial corruption in Albania, at both national and international levels, which could have served as a good source for document location, was also an obstacle. The subject matter under study for this thesis is both highly sensitive and involves certain risks. It was not easy to ask judges, politicians or criminals for something that may affect them directly or indirectly. It was also quite difficult to generate information from people in a society where 'taking the law into your own hands' (i.e. blood feud) is the norm.<sup>94</sup>

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<sup>93</sup> Since 1990 Albania has made several amendments to the constitution and changed the election system. The last changes were made in 2008.

<sup>94</sup> See Bilefsky, D. (2008) 'In Albanian feuds, isolations engulfs families', *The New York Times*, August 10.

Albanian newspapers routinely provide anecdotal evidence on the failure of courts to fight organised crime or on their links with the political elite. In a statement in 2009, Kreshnik Spahiu, then Vice Chairman of the High Council of Justice, sparked harsh criticism from the judiciary when he declared that ‘criminal groups should not dictate courts’ decisions’.<sup>95</sup> For the above reasons it was of paramount importance for this project to craft an adequate methodology of research which would not threaten the life and career of either respondents or researcher. At the same time, the methodology had to be as systematic as possible as well as robust and rigorous ensuring progress of the investigation and validation of the data.

## Case Study

There are different strategies of enquiry and this is highly dependent on the subject of the research (Creswell 2009). This project was characterised by complexity, political and professional sensitivities, ambiguity and lack of prior data. The case study<sup>96</sup> is the most suitable strategy of enquiry suggested by the literature for studies of this type. Its exploratory nature and in-depth analytical approach to a specified phenomenon in a particular country, bound by a specified historical frame, lent itself to the particularities of the study of Albanian judicial corruption (Creswell 2009:176; Yin 1994:12). Let us compare it to the alternatives.

Yin (1994:13) points out that an experiment ‘deliberately divorces a phenomenon from its context’. In case study research, knowledge of the context is of crucial importance because the ‘knowing subject is never disengaged from the body or from the world, which form the background and condition of every cognitive act’ (Tamanaha 1997:4). As I have shown in Chapter 2, the role of customary norms is still prevalent in Albania and plays a significant role in shaping the attitudes of people toward corruption, crime and law generally. One of the central concerns of this study was to look at the influence of social context on the behaviour of judges toward corruption.

While one aspect of this study was the analysis of the historical dynamics of the judicial structure and its role in judicial corruption, this was not the only objective of this research. Yin (1994:13) argues critically that such an historical approach usually lacks a contemporary factor.

He contrasts that with ‘a history...[that] does deal with the entangled situation between phenomenon and context, but usually...[in relation to] non-contemporary events’. This

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<sup>95</sup> *Shekulli Gazette*, (2009) ‘Spahiu criticises judges: Criminal groups should not dictate the court’s decisions’ (Spahiu kritikon gjyqtaret: Bandat s’mund te diktojne proceset gjyqsore), November 6.

<sup>96</sup> A case study is defined as an ‘empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident’ (Yin 1994:13).

study, in contrast, avoided that pitfall by applying history to explore the origins and practice of judicial corruption today.

The survey also is a limited tool to fully rely upon. It does not help to generate enough analysis of contextual factors and it does not provide in-depth information. For instance, a survey can show the perception of experts (e.g. judges, prosecutors, advocates, academics and journalists) but it is unlikely to produce enough substance to analyse these factors. Yin (1994:13) argues that the survey as a method does not provide an in-depth insight of the context.

He points out that 'surveys can try to deal with phenomenon and context, but their ability to investigate the context is extremely limited'. Some other advantages of the case study as a strategy of enquiry highlighted by Yin (1994:13) and relevant to this research are:

- It 'copes with the technically distinctive situation in which there will be many more variables of interest than [number of respondents]'.
- It 'relies on multiple sources of evidence, with data needing to converge in a triangulating fashion'.
- It 'benefits from the prior development of theoretical propositions to guide data collection and analysis'.

## Research Design

Once the strategy of enquiry is determined, the next step is the research design. As mentioned above, methodologies usually speak of five main types of research design: (a) experiment, (b) participant observation and ethnography, (c) survey, focus groups or semi-structure interviews, (d) archival research, and (e) evaluation. This study combined archival research with semi-structure interviews to produce a historically informed case study on judicial corruption in Albania. A historically informed approach taken here was primarily based on the archival research and a review of the literature.

In terms of periodisation, the span of time studied included the transition period of Albania from communism to democracy (1990-2011) but also considered the legacy of earlier historical sequences of disruption of judicial structures in the post-Ottoman years of, first, independence (1912 onward) and, then, communist dictatorship (1912-89). The historical approach helped to highlight the contextual role of legal culture as a potential factor of judicial corruption (Kurkchiyan 2007). Interviews were undertaken with persons who had expertise and experience with the phenomenon. Only those with direct (judges, prosecutors, advocates) or indirect (journalists, academics, analysts, retired judges and prosecutors) interest/knowledge in relation to judicial corruption were selected.

There are five components which Yin (1994) suggests a researcher should consider when preparing for the fieldwork. These suggestions should serve as guiding points for designing the research. The first component is the study or research questions, which have been

largely explained in the first chapter. The second component is the set of propositions which according to Yin (1994:21) 'direct attention to something that should be examined within the scope of the study... [They] also begin to tell you where to look for relevant evidence.' In this project my propositions were suggestions provided by the theoretical framework that have been explored in the second chapter.

The third component to be considered is 'unit analysis'. Yin (1994:22) explains that the unit of analysis is 'related to the way your initial research questions have been defined'. It indicates what you are analysing (e.g. persons, organisations, cities, etc.) to inform your study. In my case study the 'unit analysis' is primarily the individuals (e.g. judges, prosecutors and advocates) though occasionally also organisations (e.g. all level courts, High Council of Justice (HCJ) and National Judicial Conference (NJC) and informal institutions such as organised crime groups and customary norms. This duality helped to broaden the spectrum of the research because, as Maxfield and Babbie (2001:91) argue, each unit of analysis provides a somewhat different perspective on the same phenomenon.

The fourth and fifth components, according to Yin (1994), are related to the matching of the data with the suggestions of the theoretical framework and establishing criteria for interpreting the findings. For instance, data collected from judges, prosecutors and advocates regarding the accuracy of a court procedure were considered more reliable. But information regarding the outcome of a case involving corruption was cross-checked with the opinions of interviewed journalists and NGOs. Data provided by the latter were given more priority.

## Specifying the Outcome

The empirical focus of my research was on: constitutional arrangements and the institutional framework of judges' work; the patterns of judicial decisions; the nature and causes of judges' behaviour; and, in particular, factors in their decision-making in cases before them.<sup>97</sup> Though my study explored the Western Balkans as a whole conceptually, my empirical analysis focused selectively, for reasons of practicality, on judicial corruption in the context of organised crime in Albania.

Initially, in thinking about interviews, I was guided by risk factors from prior reports. To determine whether judicial corruption may be occurring in courts I probed legal and

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<sup>97</sup> The EU Commission's 2008 progress report on Albania indicated the prevalence of corruption in public institutions and more specifically in the judiciary. It points out that 'in 2007, 224 officials were identified as involved in corruption and conflict of interest, 53 of them were arrested and prosecuted. Regarding high level corruption, one former deputy minister has served a one-year jail sentence. However, a more systematic approach is needed to tackle corruption overall, particularly widespread bribery in the judiciary, police, health and customs sectors'. Available at [http://www.delalb.ec.europa.eu/files/albania\\_progress\\_report\\_2008.pdf](http://www.delalb.ec.europa.eu/files/albania_progress_report_2008.pdf) [accessed November 9, 2010].

institutional risk indicators:<sup>98</sup> the independence, accountability and transparency of judges' work (e.g. recruitment; tenure and salary; discretion of the courts; access or lack thereof to the courts; the number of times judges have been removed from office; inertia in reacting to corruption; conflict of interest and court infrastructure) (Clark 1975; Buscaglia, Dakolias and Ratiff 1995; Buscaglia 2001; Larkins 1996).

In addition, I explored sentencing indicators: unusual patterns and irregularities in sentencing; differential treatment of otherwise similar cases by type, family, city, region and social status; and reports of frequent socialising by judges with particular members of the legal profession, high profile criminals or the political elite (Schwarz 1977; Sarrica and Stolpe 2007).

To explore the relationship between judicial corruption and organised crime I explored the role of judges, prosecutors and advocates on criminal cases. I looked at the potential construction of each in the mechanism of corruption during the trial; behaviour with the witnesses, the contradictory pieces of circumstantial evidence introduced or ignored by the prosecutor or judges within the material supporting a criminal indictment; prosecutors issuing criminal indictments with an insufficient number of crime-specific elements required by the procedural codes; absence of participants in the proceedings (e.g. defendants and their solicitor/advocate, witnesses) and difficulties securing the presence of the principal participants; postponement of trials by judges and advocates; and the trend of returned cases by higher courts to lower courts (Buscaglia and Van Dijk 2003; Buscaglia 2007; Macedonian coalition 'All for Fair Trials' 2008).

These risk factors were used to generate ideas about the kind of pressure judges brought to bear and what documents to look at in both the interviews and observational phase of my study. Access to existing reports on such indicators from Transparency International, the International Commission of Jurists and the European Union Commission was obtained. This enabled me to explore the indicators they use and to draw on them in shaping my study.

The final report from a study on the links between organised crime and corruption in EU prepared by the Center for the Study of Democracy (CSD) in 2010 was also reviewed. Reports prepared by American Bar Association's Central and Eastern European Law Initiative (ABA/CEELI) on the Albanian judiciary for the period 2001-08 were thoroughly consulted and their indicators were considered as well. Finally, I discussed my initial risk indicators with a local experienced solicitor/advocate who had assisted several international organisations in preparing reports on Albanian judicial independence.

To understand judicial corruption I needed a way of determining the extent to which it exists. I also needed a way of characterising it and detecting variations in the landscape of corruption by region, urban/rural life and ethnic concentrations, among other things. As one cannot measure corruption directly, I opted to measure in terms of deviation from judicial independence and integrity. It is a standard against to which to assess judicial

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<sup>98</sup> It is suggested that many of the indicators may not explicitly lead to corruption as they could, for example, be the result of the court's inefficiency; however, these elements can help in elucidating where chances of corruption may exist.

behaviour. I chose the widely applauded Bangalore Principles of Judicial Conduct (BPJC)<sup>99</sup> and the model of an exemplary judicial behaviour that they advanced.

It is customary to use a 'standard model' (see Weber 2007, 2011) in assessing empirical data as a helpful methodological device. Weber highlights that such a model is not a hypothesis but it helps to structure the phenomenon that is the object of research. It is not descriptive in nature but it is meant to enlighten the ambiguous part of what is described. Weber leaves it up to the discretion of the researcher to select or devise their own 'applicable model', making sure that certain 'ethical' boundaries are maintained and respected throughout the process of enquiry.

The BPJC (2002) suggested themselves as an ideal standard model for this study. They were prepared and reviewed under the auspices of the United Nations by a large and culturally diverse community of judges from all legal cultures (civil law, common law, Sharia law), and from developing and developed countries, including those from post-communist societies.

I explain the reasons for selecting this model in Appendix I. In the process of determining the BPJC I have reviewed two categories: principles of judicial independence and principles of judicial conduct (Appendix II). It has also helped to decide what evidence to collect (Appendix III).

It should be emphasised, however, that any model must be used with sensitivity to the social political context (Buscaglia 2001). As Hammergren (1999:3) puts it, 'I doubt that anyone is in a position to produce the perfect checklist, first because our knowledge of the factors shaping judicial performance is too imperfect; second because, on a global level, both judicial operations and the standards for evaluating them vary widely; and third, because in the best of worlds, we are talking in terms of probabilities, not absolute laws.'

The BPJC provided a base against which to pit archival and interview data to create a portrait of the landscape of judicial corruption in Albania. In this context, I have used the BPJC and my set of indicators with a critical eye on their limitations and also have probed for new signs of judicial corruption that emerged throughout the collection of data and incorporated them into my enquiry.

## Selection of Sites and Respondents

The sampling of my respondents and sites was crucial in order to generate reliable and useful data which could then be analysed and to provide answers to my research questions. My research plan was to interview judges, prosecutors and advocates from all levels of court and also from all regions of the country. To select them a process called 'snowballing'

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<sup>99</sup> The Bangalore Principles of Judicial Conduct (2002) are 'Judicial Independence', 'Impartiality', 'Integrity', 'Propriety', 'Equality' and 'Competence and Diligence'. See them in full at [http://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf) [accessed November 25, 2009].



was used where initial contacts are asked for further referrals and those for still another wave of referrals, and so on. Respondents were selected as randomly as possible from those pools of referrals.

The next challenge was to select the places where interviews would be done and what kind of people should be selected. This involved site selection and a plan for choosing respondents. The territory of Albania is divided into 12 regions (qarqe) and 36 districts (rrethe). It has a three-tier court system composed of 29 Courts of First Instance (including a special court on Serious Organised Crime in Tirana); six Appeal courts (including a special appeal court on Serious Organised Crime in Tirana) located in the main districts of the country (Durrës, Gjirokastra, Korca, Shkoder, Tirana, and Vlora); the High Court (i.e. Supreme Court) as well as the Constitutional Court, both located in Tirana.

It should be mentioned that because of extensive commercial activity in the capital city of Tirana and the city of Durrës (Albania's main port), the Courts of First Instance of Tirana and Durrës are called 'career courts' (see Chapter 4). Other important constitutional institutions relevant to this research are the High Council of Justice (HCJ) and the National Judicial Conference (NJC), which are in charge of the nomination and promotion of judges of the first instance and appeal courts (Albanian Constitution art.147).

For the sake of the analysis I divided my respondents into two main categories – rural and urban. Due to the fact that the District of Tirana is the most urbanised and commercialised area and the majority of the main courts are there (First Instance and Appeal Courts of Tirana, Serious Crime courts, the High Court, and the Constitutional Court), I clustered all respondents from courts located in the District of Tirana under the 'urban' category and all courts located in other districts, which are proportionally less urbanised and far smaller than the District of Tirana, under the 'rural' category.<sup>100</sup> It is not by chance that the first instance court of Tirana is known by the HCJ as the 'court of career'. Thus I managed to interview judges, prosecutors and advocates from all levels of court. In order to have a diversity of opinions and to probe customary norms and assess variations I conducted interviews in the Midlands (Tirana), South (Fier, Gjirokaster, Vlora), Southeast (Korca, Pogradec) and North (Lezhe and Shkoder) (Appendix IV).

## Data Collection

Judicial corruption and its interplay with organised crime, by their nature involve many factors which make the topic very complex and diverse. In this context the researcher should find a research strategy that is open and flexible, and that leaves room for interpretation and collection of data from multiple data sources (Maxfield and Babbie

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<sup>100</sup> According to the last census, the population of the District of Tirana in both urban and rural areas was 990,270, whereas the population of the second largest district, Fier, was 496,625. See Albanian Institute of Statistics (INSTAT) (2011) 'Population and Housing Census in Albania', December, pp.17-18.

2001:23). For this reason I have triangulated qualitative and quantitative methods.<sup>101</sup> Triangulation of methods is defined as the 'use of different methods to study the same phenomena or the observation of the same issue from at least two different points' (Devis 2011:173).

Some positive aspects of triangulation are that it allows the researcher to collect a rich set of data from different sources; it minimises bias which often happens with the application of one method of research and it strengthens the validity and reliability of findings because it entails the cross-checking of a combination of sources (Anderson et al. 2011:11).

The use of quantitative research involved reviews of: the World Bank's interactive database of Worldwide Governance Indicators, Transparency International's reports on Albania, surveys conducted by Gallup Balkan Monitor on the Western Balkans (2008-10), and surveys specifically focusing on the perception of corruption in Albania conducted by the Institute for Development Research and Alternatives (IDRA) in 2005, 2006, 2008, 2009 and 2010. The qualitative research included: semi-structured interviews, archival records, direct observation and secondary data analysis. I speak in more depth about the qualitative methods of data collection below.

## **Preliminary Challenges of the Fieldwork**

Initially, I conducted a preliminary field trip for two weeks at the end of November 2009. During that visit, contacts with main mediators were sought. As a result of preliminary conversations with a small number of academics, journalists and lawyers a more refined thesis question was formulated and insight was gained into potential challenges relating to access. This early visit was intended to facilitate the next phase of the fieldwork which was conducted for five months between April and August 2010.

The first challenge was how to approach judges and prosecutors and get them to agree to give an interview. I learned that a few foreign NGOs had succeeded in accessing judges and prosecutors to interview them on issues related to judicial independence and corruption. One of the main reasons for their success, I learned,<sup>102</sup> was because these NGOs were

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<sup>101</sup> According to Creswell (2009:232) qualitative research is a 'means for exploring and understanding the meaning individuals or groups ascribe to a social or human problem. The process of research involves emerging questions and procedures; collecting data in the participant's settings; analysing the data inductively, building from particulars to general themes; and making interpretations of the meaning of the data. The final written report has a flexible writing structure.' On the other hand Creswell (2009:233) defines quantitative research as a 'means for testing objective theories by examining the relationship among variables. These variables can be measured, typically on instruments, so that numbered data can be analysed using statistical procedures. The final written report has a set structure consisting of introduction, literature, and theory, methods, results, and discussion.' According to Maxfield and Babbie (2001:23) the difference between qualitative and quantitative methods 'simply...is the distinction between numerical and nonnumerical data'.

<sup>102</sup> Interview with urban advocate no.1, 2010.

funded by their powerful governments and this fact made judges, prosecutors and even other public officials more willing to participate. I did not have international back-up.

Second, many of my potential respondents (i.e. judges, prosecutors and advocates) proved to be problematic respondents. Widespread involvement by the legal profession in corruption<sup>103</sup> meant that some of those I wished to interview might themselves be tainted, with the result that they would either be reluctant to speak or might provide inaccurate information to protect themselves.

Third, as part of the ethics approval process I was required to seek signed consent from my respondents before commencing the interview and I was told by an advocate, during the preliminary visit, that this could be another hurdle during data collection. This formalised procedure could deter many of the judges or prosecutors from participating in the interview. This awareness was, I learned afterwards, reminiscent of the communist past when law enforcement agencies used to ask for 'consent' from their victims before interrogating or torturing them. Some of my respondents could have been part of this notorious interrogation or victims of it. As I show in Chapter 4, many judges in the system today worked during the communist regime. On the other hand, some of them also come from families who were politically persecuted during that period.

Fourth, I was also made aware by my preliminary contacts that judges or prosecutors might be suspicious of my true identity as an academic researcher. It was possible that they might see me as either an undercover investigative journalist or someone working for the secret service. This proved to be a valid concern because one of my interviewed judges asked me before the interview whether I had been sent by SHISH (the Albanian Secret Service) to investigate judicial corruption.

Being aware of all the concerns mentioned above I prepared my strategies to access the fieldwork. I show below how I succeeded in overcoming these various difficulties.

### **Arranging for Access for the Fieldwork**

I embarked on my fieldwork in early April 2010 and started to arrange meetings immediately. I did some research about each of the courts and rural and urban areas I planned to visit for my interviews and observations. I also asked my mediators about any characteristic in terms of institutional behaviour of any court, such as discretionary process, that I should have been aware of. The response was 'nothing special'. Although I am from Albania and know the language's dialects and also customs of the country in general, I did, however, research through my mediators and friends from areas I planned to visit, for any custom and attitude to observe during my interviews. My interviews and observations were conducted between April and July 2010. My archival research was accomplished during August 2010.

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<sup>103</sup> European Commission Analytical Report (2010) 'Commission Opinion on Albania's Application for Membership of European Union', November 9, SEC1335, p.22.

Arrangements for access relied on four mediators or what Maxfield and Babbie (2001:285) call 'sponsors'. I had personal relations with them because of my previous legal professional experience in Albania. Due to the fact that Albanian society is a closed society and strongly based on personal relations I learned that my respondents were more likely to participate and be more open for discussion if I was introduced to them via friendship ties or through someone they could trust. The four mediators selected – one journalist, one academic, one advocate and one judge – were all very reliable and well known in their professional circles for their integrity and credibility. My 'mediators' helped me to establish initial contacts and sources and also helped me to line up the background for the interviews. They were not aware which, if any, of those contacts were eventually interviewed.

It should be noted that due to their professional experience their opinions could have brought some bias to this study. So one way of mitigating this problem was by cross-checking the evidence and views among all my respondents including those of my 'mediators'. My professional experience as an in-house lawyer in banking in Albania was not something that was likely to have influenced my views because my contacts with the courts and prosecutors were very occasional, and only in banking and telecommunication cases. I had no previous knowledge of my respondents before the interviews.

Several contacts with the 'mediators' were made two months before embarking on fieldwork, and their preliminary consent to participate in the project was sought. The list of the interviewees was planned to begin initially with my mediators. Starting with them, I planned to snowball from five or six independent initial respondents based on samples drawn from each court (i.e. civil and criminal courts; low and higher courts), the prosecution office, chamber of advocates, and other important relevant institutions for my study such as the HCJ and the NJC. Practically it proved very difficult to arrange meetings with judges and prosecutors and for this reason I used different ways to contact them either via private phone calls or use of personal contacts.

## **Design of the Interview Guide, Archival Research and Observation**

### **Semi-structured Interviews**

Semi-structured interviews were selected as a source of data because they allow flexibility and enabled me to raise other questions than those previously prepared in the schedule, and to explore new facts or themes emerging from the discussion (Wengraf 2001). A total of 61 face-to-face semi-structured interviews were conducted all over the country (Appendix IV). As a basis for construction of these interviews, informal short background

conversations were held with the mediators about their perceptions of judicial corruption in the context of organised crime during the preliminary visit in November 2009. These conversations were used to construct the field protocol to guide the interviews. The interview guide included only issues, topics and questions related to the project. The structure of the questions was crafted in such a way to include questions for all of the respondents, to cross-check views, and also some specific questions for judges (Appendix V).

For consistency of response, the range of actors and institutions under study were asked similar questions and this helped me to minimise the risk of having biased data which could have happened if I had focused only on the perceptions of one category of actors (e.g. judges). This helped me to cross-check the opinions of judges and prosecutors, and avoid the first challenge of receiving biased data mentioned above. The selection of different categories of participants with direct (i.e. judges, advocates, prosecutors) and indirect (i.e. investigative journalists, NGOs and academics) contacts with the judicial system helped me to discover information that I could not have obtained from just one category of participants.

Judges were more reluctant to speak about the role of judges in judicial corruption but were more open in speaking about the role of advocates and prosecutors. On the other hand, prosecutors were more willing to speak about the role of advocates and judges and so forth. The length of interviews varied from 45 minutes to 120 minutes. All semi-structured interviews were recorded and notes were taken during the conversation.

While with judges and prosecutors the interviews were formal, with advocates, journalists and academics I started with a warming-up conversation and gradually went to the main points. I made sure with all my respondents to intervene politely to keep the discussion focused. I tried to guide the discussion to the relevant issues and to probe new areas emerging during the interview. After each interview a short summary was prepared and reviewed together with my notes. Those points that needed further exploration were highlighted and included in the next interview guide.

I used the interview summary model suggested by Dawson (2002:113) as it was comprehensive and included all the main details of the interview in a short format (Appendix VI). Before each interview I initially asked the respondents to sign a consent form but realised that this was very awkward for them. I then changed my technique and simply introduced myself, summarised my research and its goals and asked the respondents for their oral approval and recorded that. This helped me to overcome the third challenge (i.e. the reminiscence of communist interrogations) mentioned above.

I started the recording only after I had asked the respondent's permission and pressed 'pause' when they required me to do so but continued to write and put everything in my notes. A field note diary was kept throughout the research. I also kept notes of my informal meetings with non-participants (e.g. friends, colleagues, students) and explored some of the issues which arose with my respondents.

## Accessing the Respondents

My initial assumption was that judges would be the most difficult respondents to access. I started my interviews with the largest court of the country, the court of Tirana. I could not use email as judges do not possess official email accounts. I therefore tried to arrange the meetings by visiting them at their offices, informing the judges or their secretaries directly by showing my information sheet with the logo of the university which showed what my project was and a short profile about me. I then asked the judges if we could arrange a meeting for an interview. Most of them refused on the spot without any explanation, while others used more polite justifications the most common of which was 'I am busy'.

I then learned that judges were wary of journalists so I got in touch with my journalist mediator and we went together to meet some other judges, in their offices again. The journalist would introduce both me and my project in a few words and I would immediately follow up and hand the judge the information sheet which was printed in both Albanian and English. This method worked. I conducted my first interviews which then snowballed to others suggested by the first-interviewed judge. Judges were more relaxed when I was referred by a colleague and when they learned that their colleague had also given me a similar interview. For them, this meant that what I was doing was not risky. This helped me to overcome the first challenge (i.e. accessing judges) and the fourth challenge (i.e. their not being suspicious), mentioned above.

Judges in the rural courts were more relaxed, welcoming and more open to questions. They would also offer me a coffee at the end of the interview and these moments were sometimes better occasions to collect information than during the interview. So I kept notes throughout. I realised that, in contrast, judges in the urban courts were more nervous and more aware of the time as well as more careful with their answers. With some judges I realised after the first set of questions that I would not be able to trigger much information. Their answers were very short, constantly referring back to the law, and with the judge frequently checking his watch.

To my surprise, prosecutors were the most difficult respondents to access; this was probably because the ones I targeted were those dealing with serious organised crime and corruption. To access them I was helped by an international observer who referred me to a high profile prosecutor who in turn introduced me to other prosecutors and from then on the process snowballed. Prosecutors in rural courts were friendlier, less formal and more flexible than those working in the urban courts. Almost all of the interviews with judges and prosecutors were conducted in their offices. The length of the interviews was 45-60 minutes.

I did not have any particular difficulty accessing advocates, NGOs (local and international observers), investigative journalists and intellectuals. Most of the interviews with these categories of respondents were conducted in coffee shops. The interviews with them were lengthier than those with the judges and prosecutors and varied from 60 minutes to 120 minutes.

## **Archival Research and Secondary Data**

Archival research is another useful source of data for in-depth analysis and looking for other facts of a phenomenon in a selected historical time frame. This helped me to obtain a clear perception of the context and to draw the strongest conclusions (Dantzker and Hunter 2012). As mentioned earlier, one of my interests was related to the historical context of the judiciary (1912-89) so archival research was conducted to supplement my interviews on this theme.

Having obtained approval from the Albanian National Archive, archival research was conducted for three weeks during August 2010. Around 31 files selected from the Foundation (Fondi) of the Ministry of Justice were reviewed. Official documents relating to the courts such as the correspondence of presiding judges at different levels of court in the Ministry of Justice were a valuable source of data as they expressed judicial opinion on problems facing the courts. I also reviewed other documents such as policy papers and governmental projects related to the judicial structure and laws, criminal statistics, judicial inspection acts (i.e. included information about judicial professionalism and corruption) and reports on the situation of the courts' infrastructure.

I probed decisions by the High Court and Constitutional Court on political corruption and serious organised crime, retrieving them from the official websites. For the period 2008-12 relevant official documents relating to the nomination, promotion and inspection of judges were also accessed from the official websites of the President of the Republic, Ministry of Justice and the High Council of Justice. In addition, hearings held by the Parliamentary Commission of Candidate Judges to review those proposed by the President of the Republic to be nominated to the High Court and Constitutional Court were also accessed from the official websites of the Albanian Parliament. To complement my archival and online research of official documents (Corti and Bishop 2005), I also reviewed daily newspapers and law journals for the period 1912-2012.

## **Direct Observation**

Court proceedings in criminal and civil matters were directly observed for 14 days in different urban and rural courts. Cases were profiled in terms of risk factors regarding access to the courts and issues of due process. Special attention was given to the behaviour of judges, advocates, and court administration staff during the trial; technology and other arrangements for recording proceedings, and procedural transparency. Short summaries were taken after each observation. The selection of courts was organised in order to cover all regions of Albania. Similarly to my interviews, the observed courts were in the Midlands (Tirana), North (Lezhe and Shkoder), South (Vlora and Gjirokaster) and Southeast (Korca and Pogradec). I also observed court cases at the High Court, Constitutional Courts and Serious Crime Courts. Two court sessions of one of the most sensitive corruption cases of the last five years, 'Gerdec', were also followed.

The behaviour of judges outside the courtroom was also observed throughout my fieldwork. I not only focused on institutional and administrative factors but also on potential social factors as possible causes of judicial corruption. I conducted ethnographic observations and sought to probe how customary networks of communication were constructed among the community of lawyers and the public as mechanisms to access judges (e.g. greetings, informal invitations, retreats to the coffee bar, informal language). I selected coffee bars for observation because they are the social settings most frequented by Albanians but they also are the places where, I learned, most often a corruption deal takes place.<sup>104</sup>

There are no special clubs for judges or prosecutors in Albania. I therefore observed which coffee shops the judges and advocates in both urban and rural areas most frequented, the quality of the establishment, the position (city centre or periphery; hidden or public) and finally with whom the judges or advocates were frequently sitting during short breaks (i.e. each other, family members, litigants). These observations were important to help me gain a better idea of the influence of social environment on judicial independence and also to supplement the perception of my respondents on this aspect.

## **Ethical Considerations**

At the beginning of the interview respondents were made aware of anonymised recording practices and respect for confidentiality. The questions were also crafted so as not to influence participants to generate confidential data. As mentioned earlier, all participants were informed in advance about the study and the potential risks/benefits that may derive from the project.<sup>105</sup> Data were held anonymously throughout the project; names of the participants were coded and referenced through these codes in the final thesis, so that nothing could be attributed to an identifiable individual participant (Maxfield and Babbie 2001:58).<sup>106</sup>

Each interview was recorded with a digital recorder and the interview was immediately transferred from the recorder to my personal computer on special hard drives which were both secured with a password known only by me and locked all the time in a safe security box inside my house during the fieldwork. At the end of the fieldwork the data were erased

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<sup>104</sup> In 2011, a public official of the Ministry of Finance was imprisoned for passive corruption based on the transcription of his telephone conversations where it is shown how he arranged the amount of the bribe from the briber and the place of meeting where the money was to be handed over. The place chosen was a coffee shop near to his work. See *Panorama Gazette* (2011) 'Official of the Ministry of Finance is charged with corruption' (Denohet zyrtari i Ministrise se Financave), July 10.

<sup>105</sup> See Ethical Approval Guidelines of King's College, University of London; available at <http://www.kcl.ac.uk/content/1/c6/04/02/82/Whydoinneedethicalapproval2008.pdf> [accessed October 20, 2009].

<sup>106</sup> See British Society of Criminology Code of Ethics for Researchers in the Field of Criminology; available at <http://www.britsoccrim.org/ethical.htm> [accessed October 20, 2009].



from the recorder. I personally transcribed all interviews to protect anonymity and translated them from Albanian to English. While at the writing-up stage, data was securely stored.

## **Data Analysis and Validation**

Data analysis is a progressive and very dynamic process. The researcher is engaged permanently in reflecting upon data, raising analytical questions and writing memos (Creswell 2009:184). There are various analytical strategies and this depends on the type of research (e.g. case study, ethnographic, phenomenological, narrative, etc.) (ibid). Given the amount of data and the specific context of my study I applied Creswell's suggestion of a 'linear, hierarchical approach building from the bottom up' (2009:185). This analytical approach allows researchers to give more emphasis to the context and information provided by their respondents.

All transcribed interviews, the field notes and archival materials were assembled together. After the collection, a general reading was made to get an overall idea about the information and reflect on the experience and opinions gained during this phase (ibid). Some important factors were identified that needed more investigation, so a new set of questions only focusing on the underlined areas were sent to some former respondents via email in October-November 2011. The answers were collected and attached to the other data.

All the data were then coded and reviewed systematically. I used Envivo 9 for the coding process but did not use its analytical tools. After coding, the data were sorted according to key categories, printed out and then assessed manually. New ideas which emerged during the review were listed (Merriam 1998). Relevant information was 'identified, isolated, grouped and regrouped according to the themes' (Creswell 2009:199). Then, based on these themes, the data were finally interpreted in order to respond to the research questions. It should be mentioned that all the data were in Albanian and the quotes used in the text were translated personally.

To ensure reliability and validity of the findings, the data were triangulated from multiple sources (ibid). A short summary of the empirical chapters was sent back to three different core participants to review the accuracy of the findings (Yin 1994:127; Creswell 2009:191). Thus a summary of the findings of Chapters 4 and 5 was sent to one international observer and to a judge. A summary of the findings of Chapter 6 was sent to a high profile prosecutor of Serious Organised Crime. When there was any contradiction in the data I returned to a number of relevant respondents to verify the accuracy.

In sum, my research design included a range of data collection methods. The outcomes of the study such as the complexity of the phenomenon and contextual considerations were taken into account. Ethical considerations and multiple strategies for validating the findings and reliability of procedures were also employed.

## CENTRALITY OF JUDICIAL INDEPENDENCE

In previous chapters I have explained several patterns of judicial corruption and its interplay with organised crime. The literature suggests that apart from contemporary political and economic factors other social aspects should be considered as playing a significant role. To probe them we need, in the first place, to understand the landscape of Albanian judicial corruption and the penetration of organised crime there.

In this section, I will focus on demonstrating empirically the extent and the contours of judicial corruption in Albania. The logic of this part is interpretive and its method is essentially comparative. From the literature, a 'standard model' of judicial conduct was developed and shown in Chapter 3. Now data drawn primarily from fieldwork will be used to compare judicial practice in the various Albanian courts to this 'standard model', namely the Bangalore Principles of Judicial Conduct (BPJC). Where practice varies between courts (e.g. from urban to rural areas), systematic comparisons will be made to identify patterns of variation between the courts within Albania.

I have divided this data section into two chapters (i.e. 4 and 5): in this chapter I focus on judicial independence, and in the following chapter I look at other 'values' of the BPJC. My data suggest that lack of judicial independence is one of the main factors in forming judicial corruption, and hence is afforded analytical prominence in my thesis. Furthermore, where in this chapter I describe the institutional patterns of judicial corruption, in the following chapter I focus more on the patterns of conduct of individual judges. In these settings, this method of analysis will help the reader to better grasp the difference and see both factors and the degree of judicial corruption in the Albanian judicial system.

Before describing empirically patterns of judicial corruption in the context of judicial independence, I first show the judicial structure and the main institutions which are directly and indirectly involved in the nomination, promotion and inspection of judges. As mentioned in the methodology chapter, Albania has a three tier courts system composed of first instance courts which deal with all types of cases (civil, criminal and administrative) at the first level; appeal courts which deal with all types of cases appealed from the first instance courts; a first instance court and an Appeal Court of Serious Crimes dealing specifically with organised crime; and the High Court which is the highest court in the hierarchy of the judicial system.

The High Court is divided into the criminal college and the civil college, each of which deals with civil and criminal cases appealed from appeal courts. The jurisdiction of the High Court includes charges for corruption and crimes of the President, members of government, members of parliament, and judges of the High Court and Constitutional Court. It consists

of 17 judges who are appointed by the President of the Republic with the consent of the Parliament (Albanian Constitution article 141).

The Constitutional Court is considered to be outside of the judicial system and its sole duty is to protect and guarantee respect for the Constitution. It is composed of nine judges who are appointed by the same procedure as the High Court judges (Albanian Constitution art.124). The main duties of the Constitutional Courts, among others, are reviewing compatibility of the Constitution with international agreements, dealing with national law, and normative acts at local and governmental level. It also deals with issues related to exercising powers of the President of the Republic and of the deputies (Albanian Constitution art.131).

Other important constitutional institutions in the judicial system, are the High Council of Justice (HCJ) which is otherwise known as the 'executive of the judiciary'. This institution is in charge of inspection and promotion of first instance and appeal court judges. The HCJ is composed of the President of the Republic, the Chairman of the High Court, the Minister of Justice, three members elected by the Assembly, and nine judges of all levels who are elected by the National Judicial Conference (NJC), which is otherwise known as the 'parliament' of judges exactly because of this role (Albanian Constitution art.147).

## **Applying the Standard Model to the Fieldwork**

### **Findings**

As explained in Chapter 3, I have selected the BPJC as a standard model against which to assess judicial corruption. In the following section the BPJC model will be applied to the Albanian judiciary. To do that I will assess each of the BPJC principles against direct evidence such as international and local reports, semi-structured interviews, relevant newspaper articles and court observations. First I will begin by examining various international and local commentaries on Albania to provide an overview of the situation in the last decade.

Second, I will focus on my semi-structured interviews and observations for a more detailed picture of Albanian judicial corruption to date. As the analysis of the data will show, several patterns of judicial corruption such as exchange of favours, gift-giving, 'baksheesh', customary norms and the influence of family and friendship ties, have a particular influence on judicial independence, integrity or propriety. For instance *ex parte* communication influences the propriety of the judge and also his integrity.

I will highlight and contextualise these patterns when assessing my data against each of the Principles, trying to avoid overlaps. Judicial corruption is multifaceted and there may be patterns of corruption that apply similarly to several Principles. This chapter begins with a discussion of the patterns of judicial corruption during the political transition period (i.e.

1989-2011). The intention is to give a background of the phenomena in the last two decades. The analysis then moves on to focus on judicial independence.

The background also should be seen as a context for the next chapter. I have blended the background and judicial independence in the same chapter as many of the factors of judicial corruption today can be better understood if we assess patterns of political intrusion in the judiciary over this period. My data suggest that this phenomenon is still a concern.

## Background

Judicial corruption has been a persistent concern throughout the transition from communism to democracy (1989-2012). Several international reports stress that although some progress is being made, the judiciary remains vulnerable to undue influence exerted by the political elite and organised crime in Albania.<sup>107</sup> The Council of Europe, in assessing the commitments of the Albanian government in 2004 to honour its obligations as a member state, noted that 'The judicial system is very weak, with poorly paid and poorly trained personnel. It is plagued by corruption, exposed to political pressures and unprotected against intimidation from crime syndicates.'<sup>108</sup> In a similar vein, in 2004, the Organisation for Security and Co-operation in Europe (OSCE) evidenced 'instances of undue pressure from other branches of the government to make particular decisions, especially in cases when the State was a party'.<sup>109</sup> Albania has the poorest indicators regarding the rule of law in the Western Balkans.<sup>110</sup>

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<sup>107</sup> See Freedom House report on Albania (2010) 'Nation in Transit 2010'; available at <http://www.freedomhouse.org/images/File/nit/2010/NIT2010Albaniafinal.pdf> [accessed June 6, 2011].

<sup>108</sup> Council of Europe: Parliamentary Assembly, Honouring of Obligations and Commitments by Albania, Report by the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, Co-Rapporteurs: Jerzy Smorawinski, Poland, Group of the European People's Party and Soeren Soendergaard, Denmark, Group of the Unified European Left, March 23, 2004, p.16; available at <http://www.unhcr.org/refworld/docid/4162a57c4.html> [accessed June 8, 2011].

<sup>109</sup> Organisation for Security and Co-operation in Europe (OSCE), 'Legal Sector Report for Albania 2004', OSCE, Presence in Albania, p.23; available at <http://www.osce.org/albania/23963> [accessed June 8, 2011].

<sup>110</sup> In the 2011 report by Freedom House, 'Nation in Transit', Albanian Judicial Framework and Independence scored poorer than Montenegro and Macedonia, equal with Croatia and Bosnia with 4.25 and better than Serbia 4.50 and Kosovo 5.75. The score was based on a scale where 1 represents the highest democratic progress and 7 the lowest. For more see Freedom House (2011) 'Nation in Transit 2011', 2011 tables; available at <http://www.freedomhouse.org/images/File/nit/2011/NIT-2011-Tables.pdf> [accessed June 28, 2011].

The primary cause of judicial corruption in Albania seems to be the undue influence exercised by the political elite on the judiciary. Since the early stages of institution-building between 1992 and 1998, the executive has attempted to control the judiciary by way of formal and informal mechanisms. The newly-emerging Democratic Party (DP) commenced a number of reforms to purge the system of former communist judges but apparently failed. Many of these judges remained and some are still present in the system.<sup>111</sup> To replace them, the DP, then in power, followed a politically-driven reform, infusing the system with its political supporters and weakening the role of professional judges.<sup>112</sup> The phases of the politicisation of judges will be developed more in the 'structural interdependence' section later in this chapter.

During 1997, Albania experienced considerable civil unrest, because of the collapse of a series of pyramid schemes. At least 25% of Albanian families lost their savings and 2,000 people were killed. The state was weakened and public institutions were paralysed (Jarvis 2000:1; Zogaj 2009:236; Hoxha 2008:133). Many courts were burned down in civil riots and most of the courts' documents disappeared. Courts 'were targeted by local criminal rings to destroy facts and files related to criminals'.<sup>113</sup> The judiciary was 'at its weakest point and state control almost absent'.<sup>114</sup> I speak in more detail about the 1997 civil unrest and its consequences to judicial corruption and organised crime in Chapter 6.

In the period 1998-2001, the independence of the judiciary was constituted in the 1998 Constitution on the grounds of the separation of powers. However, in practice, judicial independence still remained a concern as 'remnants of the old totalitarian mentality persisted, and the executive branch often imposed upon the country's courts' (ABA/CEELI 2001:1).<sup>115</sup> The main patterns of undue influence came externally from the executive and legislature, and internally from senior judges to junior ones.<sup>116</sup> It should be noted that for the period 1998-2005 Albania was governed by the Socialist Party (SP), a party supposedly

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<sup>111</sup> Interview with urban judge no.2, 2010.

<sup>112</sup> Interview with rural advocate no.1, 2010.

<sup>113</sup> In 1997 the state broke down, it was almost burned a lot of dirty money was accumulated by criminal rings, and there was a clash between them and the state. Gradually organised crime groups penetrated local institutions... initially they exerted influence only in their local area by corrupting local the chief police, judges or prosecutors... Mostly courts were targeted by criminal rings to destroy facts and files related to criminals. The judiciary was at its weakest point and state control almost absent.' (Interview with investigative journalist no.2, 2010). Another judicial inspector who worked as a judge at that time pointed out that 'During 97, the state fell into anarchy, courts were burned, documents were forged, and people put their hands all over, someone got a property by falsifying documents at the mortgage archives..... this period generated a lot of chaos and discontent in society ...' Interview with judicial inspector no.2, 2010.

<sup>114</sup> Interview with urban court advocate no.4, 2010.

<sup>115</sup> See reports by the American Bar Association's Central and Eastern European Law Initiative on the Judicial Reform Index for Albania (hereafter referred to as ABA/CEELI); available at [http://apps.americanbar.org/rol/europe\\_and\\_eurasia/albania.html](http://apps.americanbar.org/rol/europe_and_eurasia/albania.html) [accessed May 5, 2011].

<sup>116</sup> According to ABA/CEELI 2001:22, interviewed judges highlighted that the influence of senior judges to junior judges in 2001 was 'less likely than in the past', suggesting that during 1992-97 this influence was prominent.

committed to change the situation. The process of lustration was 'widespread inside the judicial system throughout the first decade'.<sup>117</sup>

Both the DP and SP used various strategies to attack judges who were known to have been affiliated to one party (Baze 2008). Assistant judges formerly part of the trial hearings, were removed and cases were tried whether by one judge or a panel of three. Thus this new arrangement of judicial structure was considered part of the detachment from the past and a move toward the democratic style court systems.<sup>118</sup> As a result of the political clash between the DP and SP, 'many experienced professional assistant judges were left out of the system for political reasons'.<sup>119</sup>

During 2001-08 the Law on Judicial Power<sup>120</sup> improved (Pregja 2008) and several laws were enacted against corruption.<sup>121</sup> All these reforms started to have some positive impact and began to strengthen the independence of the judiciary by reconstructing the relationship between the judiciary and executive. Interference from politics was not as direct as before; it was more of a business-like relationship (ABA/CEELI 2001:22).

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<sup>117</sup> 'One problem of the lustration policies for the democrats was the problem of judges linked with the communist past... the dilemma was, were these judges to be allowed to continue again, should they still be judges? This problem was very quickly politicised and turned into a political battle among the main political forces (Democratic Party and Socialist Party). Thus lustrations became widespread inside the judicial system throughout the first decade. There was fierce opposition from the socialists and civil society against 6-month judges, because soon it became clear that the lustration reform was a manoeuvre for power rather than a political will to free the judiciary from the communist remnant...there are people who say that those files which were kept by the communist secret service "Sigurimi" have never been opened...some say that 60% of the first Democrat parliament (after the 90s) were former collaborators of the "Sigurimi"...In the 90s, it is true, many of the files of the "Sigurimi" were destroyed...the destruction of these files continued even during the time of Sali Berisha in 1993-1997...something interesting also happened, it is said that a register of communist spies and collaborators exists, but, from a very confidential source, this register has been tampered with and names deleted...this is unprecedented in Eastern Europe...not only files disappearing but even the names of those who worked for the "Sigurimi"...the continuing of old crime and the inclusiveness of a new political class has made the lustration impossible.' Interview with academic no.3, 2010.

<sup>118</sup> Interview with urban court judge no.1, 2010.

<sup>119</sup> 'At that time people were trained on short courses (6 to 9 months) to become judges or prosecutors. A good quantity of professional judges were removed and replaced by 6-month judges... the real selection criteria for 6-month judges was political.... many experienced professional assistant judges were left out of the system for political reasons ...those individuals who formerly worked in the communist nomenclature were purged from the judiciary...individuals recruited as 6-month judges were those who had a university degree (not in law) and who had worked in public administration. ....some of them were registered part time in the School of Law and completed the 4-year degree in just two years. Some of these judges are still in the system today and some are even at the High Court.' Interview with academic no.1, 2010.

<sup>120</sup> Law no.9978, dated February 18, 2008, 'On Organisation of Judicial Power in the Republic of Albania', here and after referred to as the Law on Judicial Power.

<sup>121</sup> See the assessment of the judicial system prepared by the European Commission in 'Commission Staff Working Paper: Albania, Stabilisation and Association Report 2003' at p.5.

This trend towards independence was however distorted by another, almost equally influential, 'private' influence: friendship and family relations coupled with exchange of favours and bribes. According to interviews conducted by ABA/CEELI in 2001, two patterns of influence became especially evident in this period. First, the moral obligations towards individuals helping judges be appointed or promoted, and second the influence of friends, family and colleagues (ABA/CEELI 2001:21). These patterns were confirmed by the majority of my interviewees in 2010-11. The 'private' influence is grounded on customary norms applicable by society in general. I speak about the influence of customary norms and social context in more depth in Chapter 5.

We see that in 2005-11, although the Code of Judicial Ethics adopted by the NJC had been in force since 2000,<sup>122</sup> monetary influence increased and *ex parte* communication became more dominant.<sup>123</sup> After 2005, while *ex parte* undue influence by means of bribes and friendship continued to be a concern,<sup>124</sup> political influence on the other hand, became more sophisticated and hidden behind complex or ambiguous laws, tailored to control the judiciary from within, through its own institutions such as the HCJ and NJC, or using other mechanisms of the executive such as the Ministry of Justice (MOJ).<sup>125</sup>

My interviews also suggest that in the period 2005-11 'judges and politicians began to establish a "particular relationship" on the premise that neither party would "punish" the other'.<sup>126</sup> This strange relationship was also highlighted by the 2004 Council of Europe assessment report, which noted that although in 2002 '12 prosecutors and five judges were dismissed...', it is striking that no prosecutors or judges have been criminally prosecuted for corruption or improper professional behaviour. Such a lenient approach is difficult to understand given the pervasive character of corruption in Albania and especially within the judicial system' (Council of Europe 2004:16).

On the other hand, the High Court also maintained good relations with the executive.

Cases of two ministers (Lulzim Basha Mayer of Tirana, then former Minister of Transport and Fatmir Mediu, Minister of Environment then former Minister of Defence)<sup>127</sup> accused of corruption were dismissed by this Court 'for procedural reasons without even considering the facts'<sup>128</sup> (Bushati et al. 2008:26-30). As recently as January 2012 Ilir Meta, then Vice

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<sup>122</sup> The Code of Judicial Ethics covers almost all types of undue influences, conflict of interests and *ex parte* communications and improper political activity. For more see ABA/CEELI 2001 and 2004.

<sup>123</sup> ABA/CEELI 2004:26 emphasised that 'the existence of bribery...is far more common than other forms of undue influence'.

<sup>124</sup> See ABA/CEELI 2006:1.

<sup>125</sup> See Council of Europe Resolution no.1538 (2007) 'Honouring of Obligations and Commitments by Albania'; available at <http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta07/ERES1538.htm> [accessed June 10, 2011].

<sup>126</sup> Interview with academic no.3, 2011.

<sup>127</sup> On May 9, 2012 the Constitutional Court turned down the decision of the High Court which stopped the criminal proceedings against Fatmir Mediu, then Minister of Defence, accused of committing crime in the case known to the public as the case of 'Gerdec'. See decision of the Constitutional Court no.27, May 9, 2012.

<sup>128</sup> Interview with urban prosecutor no.4, 2010.

Minister, also accused of corruption, was also acquitted by the High Court, with a unanimous decision where the case for another minister (Dritan Prifti) is still in process.<sup>129</sup> Because of the outcome of Meta's case, the Freedom House report on 'Freedom in the World 2012' scored freedom in Albania as declining in 2012 because of the 'failure of the courts to impartially adjudicate a corruption case against a senior government politician'.<sup>130</sup>

It should be noted that the Albanian legal framework on corruption and organised crime has improved (see Figure 3),<sup>131</sup> and several key conventions were ratified such as the United Nations Convention against Corruption and the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of Proceeds of Crime.<sup>132</sup> Several institutions have strengthened their power in monitoring corruption such as the High Inspectorate for Declaration and Audit of Assets (HIDAA).<sup>133</sup> In addition, six Joint Investigative Units (JIUs) have been set up to fight economic crime and corruption.<sup>134</sup> A few of my interviewees, however, note that the JIUs are 'not having the expected efficiency gains because of their mixed composition'.<sup>135</sup> The JIU is headed by a prosecutor and its structure includes other professionals who are employees and primarily responsible to other institutions such as the

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<sup>129</sup> In 2011 the General Prosecutor's Office accused Ilir Meta, then Vice Prime Minister and Minister of Foreign Affairs, of active corruption based on a recorded video showing Meta asking Dritan Prifti, then Minister of Economy, Business and Energy, to favour a company in a tender for a profit of £700,000. Prifti denounced the deal in the press and provided the video to the General Prosecutor's Office which had been recorded by him. The video was checked by a US and UK expert and found not to have been tampered with. The High Court dismissed this evidence for breach of the procedures and called some other Albanian experts who in stark contrast found that the video had been tampered with. In 2012 Meta was found not guilty. See Decision of High Court no.8, January 16, 2012. In Prifti's recording device the foreign experts regenerated a deleted video showing Prifti receiving a bribe of £70,000 and similarly the General Prosecutor's Office accused Prifti of passive corruption. Prifti's advocate based on the Decision of Meta's case above, asked that the video be refused as evidence, asking the court to not start the trial for lack of evidence but the High Court, unlike Meta's case, turned down Prifti's request as recently as May 10, 2012 and allowed the trial to begin. See *Mapo Gazette* (2012) 'The High Court, turns down Prifti: The trial against former minister should continue' (Gjykata e Larte rrezon Priftin: Te vazhdoje gjykimi ndaj ish-ministrit), May 10.

<sup>130</sup> Freedom House (2012) 'Freedom in the World 2012', p.24; available at [http://www.freedomhouse.org/sites/default/files/inline\\_images/FIW%202012%20Booklet--Final.pdf](http://www.freedomhouse.org/sites/default/files/inline_images/FIW%202012%20Booklet--Final.pdf) [accessed May 22, 2012].

<sup>131</sup> See the 2008 Progress Report of the Albanian Government, 'National Strategy for Development and Integration' (Strategjia Kombetare per Zhvillim dhe Integrim), p.21; available at [http://www.km.gov.al/skedaret/raport\\_progresi\\_2008.pdf](http://www.km.gov.al/skedaret/raport_progresi_2008.pdf) [accessed September 22, 2011].

<sup>132</sup> See the 2007 report of the Centre for Legal Civic Initiatives, 'The Justice Organs Combating Corruption: Monitoring the activity of three first instance courts such as Tirana, Vlora and Durrës for the period 2004-2006', Tirana, Albania, pp.8-9.

<sup>133</sup> See Law no.9049, dated April 10, 2003, amended by Law no.9367, dated April 7, 2005 and Law 9475 dated February 9, 2006, 'On the Declaration and Audit of Assets, Financial Obligations of the Elected and Certain Public Officials', art.3.

<sup>134</sup> See the speech/report of the General Prosecutor made before the Albanian Parliament, 'Criminal Situation in Albania 2008' (Raportimin e Prokurorit te Pergjithshem te Republikes ne Kuvendin e Shqiperise 'Mbi Gjendjen e Kriminalitetit ne Shqiperi 2008), pp.164-168; available at <http://www.pp.gov.al/> [accessed September 20, 2011].

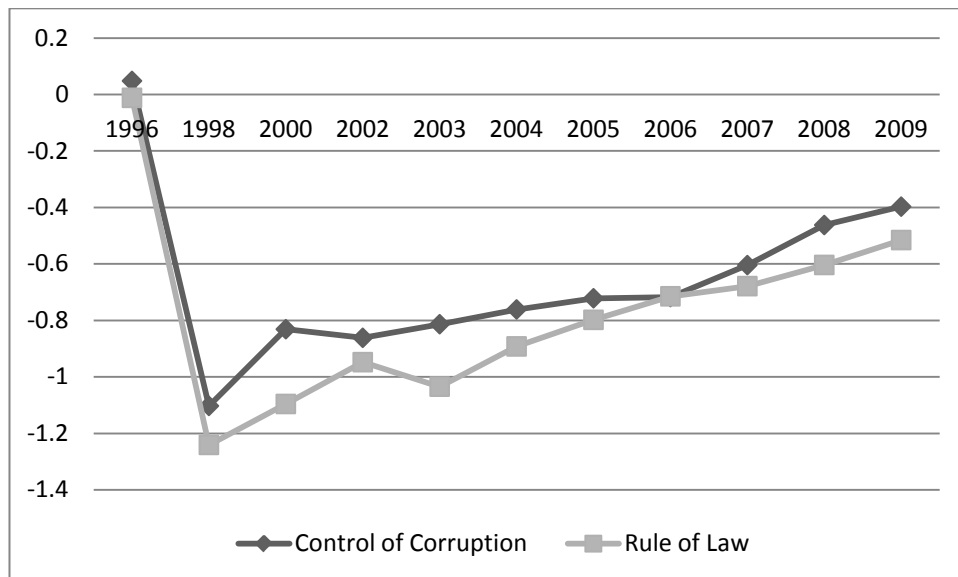
<sup>135</sup> Interview with rural prosecutor no.5, 2010.



state police and both customs and tax police.<sup>136</sup> This makes it ‘very difficult for a JIU to coordinate and maintain discretion’.<sup>137</sup>

In summarising the review of international and local reports on judicial corruption in the last decade, it is worth recalling the 2010 report by the European Commission assessing the progress of Albania in its application to become a member of the European Union. It reported that ‘Overall, *Albania lacks a tradition of judicial independence*. It needs to continue the process of reforming the judiciary, including the adoption of a comprehensive judicial reform strategy and key pending laws and the establishment of a sustained track record of implementation demonstrating the independence and efficiency of the judiciary’ (emphasis added).<sup>138</sup> Local and international reports highlight that judicial independence is the main factor in judicial corruption but they say little about other social or cultural factors. My findings suggest that judicial dependence in Albania is multilayered and involves many institutional and organisational factors. It is to these factors that the thesis now turns.

**Figure 3 Rule of Law v. Control of Corruption in Albania**



Source: Kaufmann, D., Kraay, A. and Mastruzzi, M. (2009) ‘The Worldwide Governance Indicators: Methodology and Analytical Issues’, World Bank.

<sup>136</sup> European Commission Analytical Report (2010) ‘Commission Opinion on Albania’s Application for Membership of European Union’, November 9, SEC1335, p.22.

<sup>137</sup> Interview with urban prosecutor no.5, 2010.

<sup>138</sup> European Commission Analytical Report (2010) ‘Commission Opinion on Albania’s Application for Membership of European Union’, November 9, SEC1335, p.21.

## Judicial Independence: Fieldwork Findings

In the above section I examined different aspects of how the judiciary is undermined by the political elite and illustrated its dynamics during the period of political and economic transition from communism. I relied on international and local reports as well as on some interviews undertaken during fieldwork. In the current section I turn to my data and explore the contours of Albanian judicial corruption against BPJC standards. I will begin with judicial independence.

Judicial independence is the hallmark of the BPJC.<sup>139</sup> The independence of judges is here perceived in very broad terms, from the individual and institutional perspective to social and political independence. Judicial independence, according to the BPJC, refers to 'both a state of mind and a set of institutional and operational arrangements. The former is concerned with the judge's independence in fact; the latter with defining the relationships between the judiciary and others'.<sup>140</sup>

Judges should also be free from any social pressure in the course of their work, including interpersonal connections with colleagues and parties in the litigation (Application 2).<sup>141</sup> Politically, judges should avoid any inappropriate connection with other branches of government, executive and legislature (Applications 1 and 2). As it is pointed out in the Commentary (2007:40), 'Judges should not be beholden to the government of the day' (Applications 1 and 3). Judges should also play an active role in maintaining the institutional and operational independence of the judiciary by being 'vigilant...to any attempts to undermine [their] institutional and operational independence'.<sup>142</sup> Judges can even stimulate public awareness on judicial independence by helping the public 'understand the fundamental importance' of this principle.<sup>143</sup>

In short, according to the BPJC, independence is multidimensional. It includes independence from personal views; from society; from the executive and legislature; from colleagues and court staff. Judges are also required to uphold institutional integrity and promote trust and high standards of the judiciary to the public.

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<sup>139</sup> According to the Bangalore Principles, 'judicial independence is a pre-requisite to the rule of law and a guarantee of a fair trial'. See Value 1 'Independence' in the Bangalore Principles of Judicial Conduct 2002, p.3; available at [http://www.unodc.org/pdf/crime/corruption/judicial\\_group/Bangalore\\_principles.pdf](http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf) [accessed November 10, 2011].

<sup>140</sup> See United Nations Office on Drugs and Crime (2007) 'Commentary on Bangalore Principles of Judicial Conduct', p.39. Hereafter referred to as 'Commentary'.

<sup>141</sup> 'Applications are explanations offered by BPJC which elucidate further the meaning of the 'Value' or the principle. It helps to understand the meaning of the 'value' and how this can be apply in practice by judges.

<sup>142</sup> Commentary 2007:52.

<sup>143</sup> Ibid.

My interviews also suggest that judicial independence is multifaceted, but that it is undermined in Albania institutionally, structurally and operationally.

## Institutional Independence

The majority of my interviewees pointed out that judicial institutional independence remains a great concern.<sup>144</sup> Institutionally, the judiciary is undermined by the executive externally through defective laws, an insufficient budget and the weakening of institutions that protect the rights of the judiciary, such as the HCJ. This is usually exercised through the influence of the executive and legislative representatives in the HCJ and is reflected in both legal and institutional terms. I will now show how these patterns of judicial control work. Lack of institutional independence means an inability of the judiciary to operate freely from the control of other branches of government such as the legislature and executive. The legal structure of the judiciary 'gives the impression that the judiciary in Albania is independent, but in reality this is far from true'.<sup>145</sup>

*De jure*, the Albanian Constitution guarantees the independence of the judiciary, administratively, functionally and financially (Albanian Constitution arts.135-147). In terms of administrative functions, the Albanian Constitution provides that the entire process of selection, nomination and promotion of judges is governed by independent institutions such as the HCJ, NJC and the School of Magistrates (SOM). Judges are recruited from the law students who graduate from the SOM.<sup>146</sup> This School is an independent institution and

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<sup>144</sup> 'Although the judiciary should be one of the independent powers, in reality it is not...it is independent only on non-political matters, but even on those it is dependent on the street (criminals), thus when a judge is not protected by the state, he is dependent on criminals and others...in cases influenced by politics, while not necessarily directly, indirectly as a judge you are persuaded to decide according to the political will of the political party of the day..' Interview with urban judge no.4, 2010.

<sup>145</sup> 'The legal structure of the judiciary gives the impression that the judiciary in Albania is independent, but in reality this is far from true... the way the separation of powers is enforced in Albania shows that there are interfering elements of other powers (legislative and executive) in the judiciary, which makes it impossible for an ideal application of this principle (separation of powers). There are also other aspects which make judicial independence a fragile concept or surreal ...aspects linked with the guaranteeing of the promotion of judges or the disciplinary system of judges, which means that, in practice, the exercising of judicial powers makes judicial independence less guaranteed...there is a perception among the public that judges are more protected compared with other public officials but this perception is based on the constitutional and legal guarantees which stipulate how the judiciary should function...in practice though, judicial independence suffers.Interview with urban judge no.2, 2010.

<sup>146</sup> The School of Magistrates is the only institution in charge of training future judges and prosecutors in Albania. To become a judge or prosecutor in Albania, a student of law should possess an LLB with distinction and pass a legal test organised by the School. After acceptance to the School he/she has to follow a full-time, intensive theoretical and practical education, for three years.

governed by a body of more than 15 representatives from the legal community, of which only two are appointed by the MOJ.<sup>147</sup> The HCJ can recruit 10% of the total number of judges from former judges who were not graduates of the SOM, if they fulfil the legal conditions.<sup>148</sup> Two-thirds of the HCJ are judges proposed by the NJC and only one-third are *ex officio* members – representatives of the executive and legislature. In addition, judges cannot be criminally prosecuted without approval from the HCJ. Neither can they be sent before a trial without the consent of the HCJ (Albanian Constitution art.137). These safeguards are otherwise known as ‘framing the “immunity of judges”’.<sup>149</sup>

Interviewed judges acknowledged that their immunity status is solid, whereas other interviewees such as advocates, international observers and especially prosecutors saw judges’ immunity as a barrier to prosecuting judicial corruption. Corrupt judges ‘often take advantage of this legal shield to get immunity from prosecution’.<sup>150</sup> In 2011, General Prosecutor Ina Rama raised the issue of immunity of high profile public officials, including judges, as a serious concern in fighting corruption and proposed that the law in this respect be amended. She also mentioned that in the previous five years the General Prosecutor’s Office ‘despite difficulties has requested the removal of immunity for four deputies and Ministers in the Parliament and for six judges in the High Council of Justice’.<sup>151</sup>

On one hand judges are immune from political attack, but on the other they seem immune from investigations for corruption. My interviews suggest that ‘judges are in fact immune from removal but not from other undue institutional pressures’.<sup>152</sup> However, *de facto*, the function of the judiciary is hampered by legal and institutional interference from both the executive and legislature. As one judge put it, ‘the application of the separation of powers in practice here seems to have some interfering elements of other branches of government which makes it very difficult to achieve the ideal application of the separation of power’.<sup>153</sup> I explain this below.

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<sup>147</sup> See Law no.8136, dated July 31, 1996, (amended with Law no.9414, dated May 20, 2005), ‘On the Magistrate School of the Republic of Albania’, art.6.

<sup>148</sup> See Law no.9978, dated February 18, 2008, ‘On the Organisation of Judicial Power in the Republic of Albania’, art.11.

<sup>149</sup> Interview with rural judge no.10, 2010.

<sup>150</sup> Interview with the urban prosecutor no.2, 2010.

<sup>151</sup> See the Discussion of the General Prosecutor Ina Rama presented at the Conference on the Proposal Projects of PACA and EURALIUS, April, 14, 2011; available at <http://www.pp.gov.al/> [accessed July 25, 2011].

<sup>152</sup> Interview with urban judge no.7, 2010.

<sup>153</sup> Interview with urban judge no.2, 2010.

## Legal and Institutional Obstacles

Some of the judges interviewed, highlighted that, 'legally speaking, the current Law on Judicial Power extended the power of the executive nominees such as court chancellors and limited that of the chief judges'.<sup>154</sup> In a similar vein, the new law on the organisation of the NJC was found unconstitutional by the Constitutional Court in 2008.<sup>155</sup> Lack of a law regulating the NJC has paralysed the functioning of the so-called 'parliament of judges'. Other key pieces of legislation which are related to the organisation of the judiciary, such as the law for the Administrative Court, remain "'stalled" because of the political discontent between political forces from 2009 to 2011'.<sup>156</sup>

The blockage of the NJC to gather formally and function according to a law is made for the purpose of closed interests. According to one interviewed judge, 'the underground pressure for the NJC to not gather is openly for economic, political and clan interests'.<sup>157</sup> Almost all my interviewees agreed that where the NJC has been legally paralysed, the HCJ is politically controlled. As mentioned earlier the NJC selects around 70% of the members of the HCJ and if this selection is blocked the HCJ risks lacking full membership and as a result its legitimacy will be questioned. It was only as recently as April 8, 2011 that the NJC was able to gather and replace the members of the HCJ, the mandate of which was terminated more than a year ago.<sup>158</sup> Even this meeting was made under huge political pressure and in violation of law.

Another structural problem with the NJC is the procedure and criteria used for judges who get elected by the NJC as members of the HCJ. My interviewees said that for 'a judge to put forward his candidacy and lobby is very difficult financially and is time consuming'.<sup>159</sup> There is no law that regulates the lobbying procedure there. Everything is made underground and through private connections. Political support is also a big bonus.<sup>160</sup> According to my interviewees, the most influential criteria in getting appointed by the NJC into the HCJ are strong friendship connections with fellow judges and political support. As one judge put it, 'one experienced judge who works in the court of Tirana may have friendships with at least 70 members of parliament'.

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<sup>154</sup> Interview with rural judge no.7, 2010.

<sup>155</sup> See Decision of the Constitutional Court no.25, dated December 5, 2008.

<sup>156</sup> Interview with urban judge no.10, 2011.

<sup>157</sup> 'A lack of legislation from the National Judicial Conference (NJC) (up to 2012) indicates that the High Council of Justice (HCJ) is at the limit of its legitimation. The underground pressure for the NJC to not meet is clearly for economic, political and clan interests...which has affected the independence of the judiciary. What I would see as a lack of morality from the members of the HCJ combined with a lack of regulation on their self promotion, again in my opinion, is openly an attack on judicial independence.' Interview with urban judge no.1,2012.

<sup>158</sup> See point 1 of the Decision of the HCJ no.276, dated May 6, 2011.

<sup>159</sup> Interview with rural judge no.1, 2010.

<sup>160</sup> Interview with rural judge no.2, 2010.

So judges appointed to the HCJ need to have both political support and support from their colleagues because as mentioned earlier the HCJ is the institution which inspects, promotes and evaluates judges of the first instance and appeal courts. The political elite want to have some control over the judiciary but on the other hand corrupt judges also want to have their own people selected at the HCJ to be protected from inspection and be promoted. I will explain this struggle for power among judges later in this chapter.

## How the High Council of Justice (HCJ) Is Controlled

It is at the discretion of the HCJ to decide the criteria to be used for evaluating judges. The HCJ 'does not publish the names of those who apply for the vacancies, nor does it publish the reasons and decisions for its selections or promotion of judges'.<sup>161</sup> According to my interviewees there are two main factors that have weakened the role of the HCJ. These are structural and procedural issues.

**Structural and procedural issues** of the HCJ are mostly related to the operational structure of the HCJ, its power and composition. As mentioned above, the HCJ is composed of 15 members, of whom only ten are judges (such as the Chief Justice of the High Court) with nine other judges coming from courts of all levels and proposed by the community of judges through the NJC. The remaining five (i.e. *ex officio*) are a mixture of representatives of the legislature and executive such as the President of the Republic who is head of the HCJ, the Minister of Justice and three individuals appointed by the Albanian parliament.<sup>162</sup>

Apart from the Vice Chairman of the HCJ, the criteria for representatives of both executive and legislature are not to be a judge but the broadly framed requirement is 'an experienced lawyer of not less than 15 years working experience'.<sup>163</sup> The HCJ promotes and

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<sup>161</sup> 'The lack of transparency is evident in the way the HCJ has promoted judges recently (2010)... the community of judges has been kept in the dark, we do not know the procedure and the selection criteria used for the candidates. The HCJ does not publish the names of those who apply for the vacancies, nor does it publish the reasons and decisions for its selections or promotion of judges... they simply declare the names but do not give reasons why they have selected some and not others...and it is difficult to know whether it was a good selection..' Interview with rural judge no.1, 2010. Another interviewed advocate on this issue pointed out, '...the fact that meetings of the HCJ regarding the promotion of 40 judges in the court of Tiranë and Durrës in 2010 lasted only 30 minutes shows that everything was a result of lobbying outside the official meetings of the HCJ.. whereas in fact the criteria of selection should be debated inside HCJ offices and be official...this reflects the lack of transparency on the part of the HCJ...'Interview withurban advocate no.5, 2010. Interview with urban judge no.1, 2010. According to the law, the HCJ keeps and updates each six months a ranking list of judges according to criteria stipulated by its decision. See Law no.9978, dated February 18, 2008, 'On the Organisation of Judicial Power in the Republic of Albania', art.14.

<sup>162</sup> See Law no.8811, dated May 17, 2001, (amended with Law no.9448, dated December 5, 2005), 'On the Organisation and Functioning of the High Council of Justice', art.3.

<sup>163</sup> Ibid, arts.4, 11, 12.

transfers judges of all instance courts, except those of the Constitutional and the High Court. Although the number of *ex officio* members is limited to only one-third and the decisions of the HCJ are taken by a simple majority,<sup>164</sup> powers given to *ex officio* members by law, especially to the executive's representatives such as the President of the Republic and the Minister of Justice, are critical to control not only the HCJ but also the judicial system as a whole. So the *ex officio* members are a minority which rules the majority in the HCJ and I explain how.

## Role of the President of the Republic

The first obvious pattern of the executive's control over the HCJ is the extensive role of the President of the Republic. Apparently, the power of the President in chairing the HCJ is based on the principle of *primus inter pares* (i.e. equal among equals) (Zaganjori and Anastasi et al. 2011:186) but there are certain legal mechanisms who makes him significantly influential. The active role of the President begins with his power to convene and chair meetings of the HCJ.<sup>165</sup> More direct control by the President imposed on the HCJ and on the judiciary in large is, first, through his vote as a member of HCJ, and second, the right to decree (or not) judges proposed by the HCJ.<sup>166</sup> Concern over this dual role of the President has been raised by the international community (ABA/CEELI 2004:8).

Moreover, the President can refuse proposals made by the HCJ. During his term President Moisiu refused around 20 candidates proposed by the HCJ (Moisiu 2009:72). In addition to these powers, the President has the right to nominate and propose to the parliament the names of chief justices and judges of both the High Court and Constitutional Court.<sup>167</sup> The Chief Judge of the High Court is also an *ex officio* member of the HCJ and can 'easily be counted as a political vote for quid pro quo favour in certain promotions'.<sup>168</sup>

Indirect control by the President over the HCJ is made through his discretion to nominate the Vice Chairman of the HCJ who has an important role in managing and controlling this institution. According to law, one of the members of the HCJ has to be selected as the Vice Chairman, and it is for the President of the Republic to propose his or her name.<sup>169</sup> This

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<sup>164</sup> Ibid, art.25.

<sup>165</sup> Ibid, art.11. It should be mentioned that even when a meeting of the HCJ is called by a verbatim request of at least five members it is for the President to formally chair it. Ibid, art.19.

<sup>166</sup> See Albanian Constitution art.136, para.4.

<sup>167</sup> Ibid, art.147, paras.2, 3.

<sup>168</sup> Interview with urban advocate no.5, 2010.

<sup>169</sup> See Law no.8811, dated May 17, 2001, (amended with Law no.9448, dated December 5, 2005), 'On the Organisation and Functioning of the High Council of Justice', art.12.

‘gives enormous power to the President to control the nomination and promotion of judges as well as their inspections’.<sup>170</sup>

Since 1998, there has been a power struggle between the executive and the institution of President of the Republic regarding the control of judicial appointments of the High Court and the Constitutional Court judges.<sup>171</sup> Constitutionally, the President of the Republic is designed to strike a balance between the legislature and executive in appointing judges of both High Court and Constitutional Court. According to the Constitution, nomination of these judges requires parliament’s consent (Albanian Constitution arts.125, 136). In addition, the Constitution before its amendments in 2008 stipulated that both political position and opposition need to agree with the proposals of the President, something that will strengthen the trust of other powers in the judiciary.<sup>172</sup>

As the appointment of both High Court and Constitutional Court judges was crucial for political forces, two former presidents, Rexhep Meidani (1997-2002) and especially Alexander Moisiu (2002-07), had an informal pre-clearing procedure with political parties for the suggested candidates before sending their names to parliament for consent. This procedure ‘aimed to protect the reputation of the judiciary in front of the public’.<sup>173</sup> But a breakthrough in this practice occurred when a judge proposed by President Moisiu for the High Court was voted down by the majority in parliament although the consensus of both political camps was taken beforehand by him. The majority, then socialists, argued that the proposed judge was refused by them because she was one of the judges in the trial that condemned their socialist leader Fatos Nano in the early 1990s on political grounds (Moisiu 2009:173).

The current President Bamir Topi, formerly vice president of the DP, the actual governing political force, has followed a different route for proposing judges of the High Court and Constitutional Court. In contrast to two former presidents, President Topi avoided the pre-clearing practice which ‘appeared to be a failure’.<sup>174</sup> In 2008, parliament voted down five candidates proposed by the President without even checking their files and this was a ‘very extreme case at this point’.<sup>175</sup>

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<sup>170</sup> ‘...prior to 2007, the President of the Republic decreed the proposals made by the HCJ with regard to nomination and promotion of judges. This time (2010) we did not receive any information as to why almost all the judges voted for by the HCJ were decreed by the President. He has the right to refuse them....he also has the right not to provide reasons for his decisions and this happened in the time of Moisiu....this mechanism (decree) gives enormous power to the President to control the nomination and promotion of judges as well as their inspections by the HCJ...’ Interview with urban judge no.1, 2010.

<sup>171</sup> Interviews with urban judge no.5, 2010.

<sup>172</sup> Interview with urban judge no.5, 2010.

<sup>173</sup> Interview with international observer no.1, 2010.

<sup>174</sup> Interview with international observer no.1, 2010.

<sup>175</sup> ‘The appointments of the High Court and Constitutional Court judges have essentially been left to the President of Republic with a pretty free hand. In the time of Meidani and Moisiu, they had a



It should be made clear that there have been on-going crises between President Topi and the executive during his term and this political discontent is mainly evidenced in the appointment of the High Court and Constitutional Court judges.<sup>176</sup> For the period 2008-11, there were around twelve candidate judges<sup>177</sup> proposed by President Topi who were either voted down by parliament or barred at the hearing procedure of the special commission of parliament.<sup>178</sup>

In addition, my interviewed judges reported that the role of the President as the Chairman of the HCJ in controlling the promotion right of first and appeal court judges is 'very influential and that this becomes more obvious in the period 2007-11'.<sup>179</sup> The Vice Chairman of the HCJ is in control of all the executive powers of the HCJ, where, among other functions, he is in charge of managing the activity of the Judicial Inspectorate of the HCJ, which is the main body authorised with inspecting judges of first instance and appeal courts.<sup>180</sup> In addition, the Vice Chairman heads the special commission set out by the HCJ to nominate, transfer and promote applicant judges where vacancies arise.<sup>181</sup> He is also in charge of signing all decisions by the HCJ.<sup>182</sup>

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practice of informally discussing things with parliament beforehand, perhaps the leader of the majority, whatever, to ensure, since the nomination process is subject to parliamentary consent, some guarantee that things would be accepted. As you know, what really happened was that Alfred Moisiu appointed the judge from the Court of Appeals, in 2005. He had spoken with all the parliamentary parties and they were all essentially in favour of his candidacy and so he went ahead with the nomination, but then his candidate judge decided a case which was not well received by socialists ...and so the socialists who had the majority in Parliament in 2005 didn't vote for that nomination. President Moisiu was furious and stopped doing this pre-clearing procedure, and President Topi did not do it when he appointed six people in 2008, a mechanism which appeared to be a failure. That is a very extreme case, .... the six nominees were voted down by Parliament without even checking their files...'Interview with international observer no.1, 2010.

<sup>176</sup> See European Commission Analytical Report (2010) 'Commission Opinion on Albania's Application for Membership of the European Union', November 9, SEC1335, p.6.

<sup>177</sup> The list of candidates refused: in 2008, five candidates for the High Court (Kristaq Traja, former judge at the European Court of Human Rights, Zamir Poda, Artan Zeneli, Mehdi Bici and Altina Xhoxhaj); in 2010, six candidates in total, four proposed for the Constitutional Court (Vangjel Kosta, Edlira Jorgaqi, Ardian Leka and Artan Hoxha) and two for the High Court (Sokol Çomo and Vexhi Muçmata); in 2011, one refused for the High Court (Manjola Bejleri). For more see decrees for each of the above names at the official website of the President of Republic; available at <http://www.president.al/english/pub/dekrettime.asp>.

<sup>178</sup> *Mapo Gazette*, (2011) 'Judges decreed by Topi: The parliament passes only half of them' (Gjyqtarët e dekretuar nga Topi, Kuvendi kalon vetëm gjysmat), June 15.

<sup>179</sup> '...the role of Chairman and Vice Chairman of the HCJ is very influential in promotion of judges and this becomes more obvious in the period 2007-11. In terms of nomination of judges in this period I can't really say who had the most integrity but I'm afraid the judges who were appointed by the current President (Bamir Topi) have a particularly poor track record and that's also true of the courts....' Interview with international observer no.3, 2010.

<sup>180</sup> See Law no.8811, dated May 17, 2001, (amended with Law no.9448, dated December 5, 2005), art.13.

<sup>181</sup> *Ibid*, art.29.

<sup>182</sup> *Ibid*, art.36.

## Role of the Minister of Justice

My interviews highlight that another powerful mechanism of influence by the executive over the HCJ and the judiciary in general, is the role of the Minister of Justice (MJ). Similar to the President of the Republic, the MJ has a voting right as a member of the HCJ but he does not vote on decisions related to the disciplinary proceedings of judges initiated by him.<sup>183</sup> Only three subjects may ask to propose issues to be considered in the agenda of the HCJ's meetings: the Vice Chairman, the MJ, and five other members together.<sup>184</sup> Only those issues raised by the MJ should be reviewed in the earliest meeting of the HCJ.<sup>185</sup> The majority of my interviewees saw 'the power of the Ministry of Justice to initiate the disciplinary proceedings of judges as a clear interference of the executive to the judicial independence'.<sup>186</sup>

The MOJ, based on the evidence gathered from its inspection or that of the HCJ, has the right to initiate a disciplinary proceeding for first and appeal court judges. Judges of both High and Constitutional Courts are immune from these inspections. The MOJ also has the discretion to propose to the HCJ what kind of disciplinary penalty should be given.<sup>187</sup> The MOJ thus 'takes prosecutorial roles against judges; it investigates them, gathers proof, brings the accusation before the HCJ, and defends them as well as proposes the disciplinary penalties to the HCJ'.<sup>188</sup> It may come as a surprise but the Constitutional Court, in a decision of 5 to 4, found it a breach of the separation of powers when the penalty charge was decided by the HCJ and not left to the Ministry of Justice (Zaganjori and Anastasi et al. 2011:179).

## How *Ex Officio* Members Control the HCJ

Apart from the above legal powers given to representatives of the executive in the HCJ, it is still very difficult to understand how *ex officio* members, constituting only one-third of the HCJ, influence the votes of representatives of the judiciary that makes up two-thirds of the

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<sup>183</sup> Ibid, art.25 point 3.

<sup>184</sup> Ibid, art.22 point 2.

<sup>185</sup> Ibid, art.31 point 1.

<sup>186</sup> Interview with urban judge no.7, 2010.

<sup>187</sup> Law no.8811, dated May 17, 2001, (amended with Law no.9448, dated December 5, 2005), art.31 point 3.

<sup>188</sup> '...the Minister of Justice (MOJ) has the power to discipline judges...he can also decide to close the file or not trigger the proceedings at all...so the MOJ takes prosecutorial roles against judges; he investigates them, gathers evidence, brings the accusation before the HCJ, and defends them as well as proposing the disciplinary penalties to the HCJ. Today, the Minister of Justice proceeds whoever he wants. And this is not only with the current Minister but with the MOJ as an institution...'  
Interview with urban judge no.1, 2010.

HCI. I asked judges how this was possible. According to those interviewed the representatives of the judiciary in the HCI have 'not shown the integrity and strength of independence to be the ones who lead the HCI'.<sup>189</sup> This weakness has given 'more space to the representatives of the executive and legislature and has limited the power of judges there'.<sup>190</sup> Several interviewed judges confirmed that during recent years, one particular phenomenon has occurred. Members of the HCI, 'in an open conflict of interest, have been promoted during the time they were members of the HCI'.<sup>191</sup>

Their promotion has been triggered either by the Chairman of the HCI (i.e. President of the Republic), the Minister of Justice or the Vice Chairman of the HCI. This has led representatives of the judiciary, who are judges, to not differentiate from the rest of the HCI (i.e. *ex officio*). According to one judge I interviewed, 'their policies comply with the closed interest of *ex officio* members and for this reason member judges are reluctant to oppose the government's initiatives on judicial reforms which undermine the interest of judges'.<sup>192</sup>

The majority of interviewed judges highlighted that many of their rank see membership of the HCI as 'a means for promotion and as an exchange of favour between the representatives of the executive and representatives of judges'.<sup>193</sup> As of August 2011, six out of 17 judges (one place is still vacant) of the High Court, including Chief Judge Shpresa

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<sup>189</sup> Interview with urban judge no.2, 2010.

<sup>190</sup> Interview with urban judge no.4, 2010.

<sup>191</sup> Interview with rural judge no.10, 2010.

<sup>192</sup> '...first of all the HCI lacks the legitimisation of the decision-making or of judicial reform, because the HCI, at the moment (2010), has four questionable votes. The mandates of three members terminated and the HCI extended their mandate artificially, while two other members selected by the NJC were moved, one to the Constitutional Court and the other to be a Member of Parliament. So although the HCI has 9 members who represent the judiciary, 4 of them do not have legitimisation and this makes the decision-making of this institution questionable and subjective, it deflates the power of representatives of the judiciary.... And this is in violation of the spirit of the autonomy of the judiciary which requires that the decision-making of the judicial councils be influenced strongly by judges.... representatives of judges in the HCI have not shown integrity and the power to be independent and to be those who lead the HCI. This has meant that the representatives of the executive and legislative have more power and eclipse the power of the judges in the HCI. In 2010, a phenomenon occurred whereby the members of the HCI were promoted while they were members of the HCI, in an open conflict of interest. Their promotion was triggered by the Chairman of the HCI (i.e. President of Republic), who has the right to select and propose the names of judges of the High Court and Constitutional Court, or with the proposals of the Minister of Justice or the Deputy Chairman of the HCI. This led representatives of the judiciary, who are judges, to not differentiate from the rest of the HCI (i.e. *ex officio*). Their policies comply with the closed interests of *ex officio* members and for this reason member judges are reluctant to oppose the government's initiatives on judicial reforms which undermine the interests of judges...' Interview with urban judge no.2, 2010.

<sup>193</sup> Interview with rural judge no.6, 2010.

Beçaj, have been promoted while being members of the HCJ;<sup>194</sup> and similarly, four out of nine judges of the Constitutional Court have been members of the HCJ before their promotion there.<sup>195</sup>

The HCJ has not only been used by its member judges as a springboard to the High Court and Constitutional Court with the support of the executive's representatives, but also as a promotion tool for those working in rural first or appeal courts to advance their careers in more urban and 'lucrative' courts.<sup>196</sup> Almost 'all member judges of the HCJ have been promoted in appeal courts or higher courts'.<sup>197</sup>

According to two experts appointed by the European Council to review anti-corruption policies in Albania in 2010: 'with regard to the appointments of judges to the appeal courts, the selection procedure was carried out in a completely non-transparent manner, in violation of law, and partly even in violation of rules recently set by the HCJ itself, and undoubtedly far from compliance with European standards for the judiciary'.<sup>198</sup> This pattern of exchange of favours among the community of judges is becoming increasingly evident.<sup>199</sup> It is not by chance that the number of disciplinary proceedings followed by the HCJ is decreasing.

This can explain the argument mentioned earlier that corrupt judges support their loyal friends to be appointed at the HCJ in order to be protected from inspections for corruption

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<sup>194</sup> See Judge Besnik Imeraj, Judge Guxim Zenelaj, Judge Ardian Nuni, Judge Aleksander Muskaj and recently Judge Edmond Islamaj. For more details see their CVs at the website of the Albanian High Court; available at <http://www.gjykataelarte.gov.al/> [accessed July 12, 2011].

<sup>195</sup> See biographies of Judge Vladimir Kristo, Judge Petrit Plloçi, Judge Admir Thanza and Judge Altina Xhoxhaj on the website of the Albanian Constitutional Court; available at <http://www.gjk.gov.al/> [accessed July 12, 2011].

<sup>196</sup> See e.g. the CV of the recent member of the HCJ, Hysen Saliko who worked as a judge in a rural first instance court of Kolonje 1994-2007 (this court was closed in 2007 because of judicial reforms) and who then was an HCJ inspector from December 2007 to May 2010, and then upgraded in May 2010 as judge of the Appeal Court of Vlora and also became a member of the HCJ in April 2011. For more see the CV of Hysen Saliko at the HCJ website; available at [http://kld.al/saliko\\_hysen](http://kld.al/saliko_hysen) [accessed July 12, 2011].

<sup>197</sup> Interview with a member of the National Association of Judges, 2010.

<sup>198</sup> See the Expert Report prepared by Francis Desterbeck and Thierry Loquet for the European Commission, titled 'Rule of Law Mission: The Fight Against Corruption', June 7-11, 2010 (unpublished). This report is mentioned in several media articles, see also Neza, A. (2011) 'Why so much fear from lifting of immunity' (Pse gjithe kjo frike nga heqja e imunitetit), *Panorama Gazette*, September 22.

<sup>199</sup> Interview with rural judge no.1, 2010.

or other irregularities as a result.<sup>200</sup> In 2008 there were eleven disciplinary proceedings, where seven cases were discharged and four were postponed to the next year.<sup>201</sup>

In 2009 the number of disciplinary proceedings increased to 14, where only three judges were penalised, five discharged, four cases postponed to the next year and two dismissed/closed.<sup>202</sup> In 2010 the number of disciplinary proceedings plummeted to three cases only, where two disciplinary proceedings' requests were withdrawn by the Ministry of Justice and one was discharged by the HCJ.<sup>203</sup>

## How the HCJ Controls the Judiciary

**Promotion and evaluation process of judges:** My interviews suggest that the promotion system is also a mechanism for judicial corruption. Up until 2010, the evaluation system was very simple and based on only three indicators: two quantitative indicators (the number of court decisions per year and the time spent processing a file) and a qualitative indicator (the percentage of decisions returned by the appellate courts).<sup>204</sup>

**Deficiencies in the evaluation process:** The qualitative indicator of the HCJ, such as the percentage rate of returned cases from the appeal courts, seems unrealistic for the Albanian context. According to the HCJ, a first instance court judge should have not more than 30% of his total cases returned to score the qualitative indicator.<sup>205</sup> Practically, this indicator does not help professional judges to be promoted. My interviews suggest that

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<sup>200</sup> Judges may be disciplined by the HCJ for several violations mainly related to ethical misbehaviour, violation of law while managing a case, and extortion. See art.32 on disciplinary proceedings of the Law no.9877, dated February 18, 2008 on the 'Organisation of Judicial Power in the Republic of Albania'.

<sup>201</sup> See the HCJ report 'Summary Information of Some Activities of the High Council of Justice during 2008' (Informacion Permbledhes per Disa Aktivitete te Keshillit te Larte te Drejtesise); available at [http://www.kld.al/aktivitete\\_2008](http://www.kld.al/aktivitete_2008) [accessed September 21, 2011].

<sup>202</sup> See the HCJ report, 'Summary Information of Some Activities of the High Council of Justice during 2009' (Informacion Permbledhes per Disa Aktivitete te Keshillit te Larte te Drejtesise); available at [http://www.kld.al/aktivitete\\_2009](http://www.kld.al/aktivitete_2009) [accessed September 21, 2011].

<sup>203</sup> See the HCJ report, 'Summary Information of Some Activities of the High Council of Justice during 2010' (Informacion Permbledhes per Disa Aktivitete te Keshillit te Larte te Drejtesise); available at [http://www.kld.al/aktivitete\\_2010](http://www.kld.al/aktivitete_2010) [accessed September 21, 2011].

<sup>204</sup> See the HCJ's Decision no.199, dated September 15, 2006, 'On the Evaluation Criteria of the Judicial Performance', (amended with Decision no.238, dated December 24, 2008); available at <http://www.kld.al/vendime> [accessed July 4, 2011].

<sup>205</sup> See the HCJ's Decision no.199, dated September 15, 2006, 'On the Evaluation Criteria of the Judicial Performance', point 4; available at [http://www.kld.al/vendim\\_kriteret\\_matese](http://www.kld.al/vendim_kriteret_matese) [accessed July 4, 2011].

‘the professional level of High Court and appeal court judges is lower than that of first instance court judges’.<sup>206</sup>

There are around 641 judges and prosecutors working in Albania today and only 208 of them have come via the professional education of the SOM.<sup>207</sup> The remainder is composed of ‘judges and prosecutors educated during the communist period and of those qualified from short intensive courses in 1993-94, the so-called “six-months judges”’.<sup>208</sup>

Whereas the majority of graduates from the School of Magistrates ‘work in first instance courts, the remaining contingent operates in appeal courts, the High Court and the Constitutional Court’.<sup>209</sup> My interviewees noted that the number of cases returned by the appeal courts increased and this has undermined the institution of due process and judicial review, a problem still persistent in post-communist judicial systems (Herron and Randazzo 2003; Sadurski 2005). The high level of returned cases by appeal courts and the High Court has raised concerns in the community of judges. As one first instance court judge put it:

‘The trend [of returned cases from appeal to first instance court] is sharply increasing in an illogical and illegal way. They return cases to us and we decide the same, then cases are appealed and they return back to us again. The system of judicial control is not working at all.’<sup>210</sup>

So the unreasonable ‘high level of returned cases’ seems to be a pattern of judicial corruption used by the corrupt judges in the appeal courts or the High Court. A few interviewees highlighted another pattern used by corrupt judges to undermine honest judges who work in the first instance courts. This is applicable in cases tried by three judges. Here, ‘the corrupt judges try to oppose the decision of the honest judge and leave the opinion of the latter in minority, in legal terms known as “a dissent judgement”’. A large number of dissenting opinions would make the honest judge look unprofessional and will be counted as an indicator of poor performance in his evaluation. Sooner or later the

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<sup>206</sup> ‘...I can say that the quality of the decisions of first instance courts is very good in the appeal courts but very poor in the High Court, where in fact it should be the contrary...so the professional level of the High Court judges and appeal court judges is lower than that of first instance court judges. This shows, I believe, the extent of the phenomenon. I probably would not call it judicial corruption, but incorrect exercise of duty by the High Court...’ Interview with former Minister of Justice, Enkelejd Alibeaj. Another high profile judge pointed out: ‘...I am totally dissatisfied with the way the High Court works today.... we see the way decisions are taken by the High Court...they take contradictory positions on similar cases.. I, have sometimes seen far better decisions given by judges of the first instance and appeal courts...’ Interview with urban judge no.5, 2010.

<sup>207</sup> See the official website of the School of Magistrates, at ‘General Introduction’; available at <http://www.magiistratura.edu.al/#185> [accessed July 18, 2011].

<sup>208</sup> Interview with urban prosecutor no.4, 2010.

<sup>209</sup> Interview with urban judge no.2, 2010.

<sup>210</sup> Interview with rural judge no.2, 2010.

honest judge has to either conform to the corrupt environment or to accept the fact that he or she will never be promoted.’<sup>211</sup>

In 2010, there were three decisions issued by the HCJ tackling issues of the evaluation process but in none of them was it made clear what suggestions were to be accepted and what were not.<sup>212</sup> According to the former Minister of Justice Enkelejd Alibeaj, promotion ‘was based on two criteria: static, such as publishing research papers; and dynamic, such as evaluation of the day-to-day work of judges’.<sup>213</sup>

Since April 2010 the HCJ has changed almost the entire process of evaluation for first instance courts and, according to some judges I interviewed, ‘has made it more complicated’.<sup>214</sup> It should be emphasised that the remarks made by the interviewed judges above were based on the old system of evaluation. The majority of my interviews were conducted between March and September 2010. The interviewed judges were not familiar with the new system. During 2009, the HCJ asked judges for their comments regarding the old system of evaluation (i.e. the system in practice before April 2010) and many of them sent their suggestions.<sup>215</sup>

So, in 2011, I asked a number of them whether their suggestions had been included in the new system of evaluation.

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<sup>211</sup> ‘...the corrupt judges try to oppose the decisions of the honest judge and leave the opinion of the latter in the minority, in legal terms known as “a dissent judgement”. A large number of dissenting opinions would make the honest judge look unprofessional and would be counted as an indicator of poor performance in his evaluation. Sooner or later the honest judge has to either conform to the corrupt environment or to accept the fact that he or she will never be promoted. This is one of the ways an honest judge can be undermined and made to fit with the corrupt system. Otherwise he will get out of the system...’ (Interview with urban advocate no.7, 2010).

<sup>212</sup> See the HCJ’s Decision no.261, dated April 14, 2010, Decision no.268, dated September 15, 2010, and Decision no.269, dated September 27, 2010. For more see ‘The Summary of Activities of the High Council of Justice for 2010’; available at [http://www.kld.al/aktivitete\\_2010](http://www.kld.al/aktivitete_2010) [accessed July 4, 2011].

<sup>213</sup> ‘...the promotion was based on two criteria: static (academic experience), such as teaching and publishing research papers; and dynamic, such as evaluation of the day-to-day work of judges. The HCJ should have prepared a regulation which would have determined the order and classification of judges according to their work performance. But this was not done. The static criterion was not applied. .... according to my information even in recent promotions (2010) made mainly in the courts of Durrës and Tirana, which are the most preferred courts in the country, judges were not evaluated according to these criteria, and this fact is also mentioned in the minutes of the HCJ’s meetings...’ Interview with former Minister of Justice, Enkelejd Alibeaj, 2010.

<sup>214</sup> The new evaluation system is based on three broad category groups: (a) general professional, organisational and implementation skills; (b) legal and technical skills; and (c) human resources and professional commitment. For more see the HCJ’s Decision no.261/2, dated April 14, 2010, ‘Evaluation System of Judges’.

<sup>215</sup> Interview with rural judge no.7, 2010.

One judge pointed out:

‘Not only is there no transparency by the HCJ on our suggestions, but even their decisions on the evaluation procedures have not been enforced. We still do not know the reasons why the evaluation of judges has not been completed, or rather, while many judges have been evaluated by the inspectors of the HCJ, why the latter fails to decide and publish the results.’<sup>216</sup>

The new evaluation system for the appeal and serious crime courts has raised concerns among the community of judges. Awarding more points for work experience and fewer for qualifications disfavours judges graduating from the SOM, who score high in qualifications but low in work experience. According to an interviewed judge, ‘this evaluation system is made on purpose by the HCJ to leave out all this generation of judges. This makes it very difficult for them to be upgraded in higher and urban courts.’<sup>217</sup>

In a similar vein, a few interviewed judges noted that the ‘proposal of recruiting 10% from the community of judges, introduced in the current Law on Judicial Power, came from the HCJ and not from the government’.<sup>218</sup> This is because every judge who enters the system should have graduated from the SOM and the only way for the HCJ to retain some control over the judiciary has been to allow itself the power to recruit people out of the judicial system such as advocates and lawyers.<sup>219</sup>

This ambiguity and confused procedure in the evaluation has led to almost all current promotions being perceived by the public as corrupt. The majority of interviewees noted that the promotions of 2008-10 were very doubtful. According to a chief judge of a first instance court, ‘The promoted judges in 2010 were not the best ones, especially those promoted in the appeal courts.’<sup>220</sup> For the last six years the HCJ has failed to conduct a general evaluation of judges, and this, according to former Minister of Justice Enkelejd Alibeaj, is a ‘dramatic circumvention of the law by the HCJ’.<sup>221</sup>

### **‘Career Courts’ – Another Pattern of Corruption**

Another equally biased and illegal promotion scheme employed by the HCJ, in the view of the majority of the interviewed judges, is the promotion to the so-called ‘Career courts’ – i.e. courts of Tirana (Albania’s capital) and Durrës (the country’s main port). Thus, a simple move from a rural court to an urban court, although they are both first instance courts, is

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<sup>216</sup> Interview with rural judge no.9, 2011.

<sup>217</sup> Interview with urban judge no.2, 2010.

<sup>218</sup> Interview with rural judge no.10, 2010.

<sup>219</sup> Interview with rural judge no.7, 2010.

<sup>220</sup> Interview with rural judge no.6, 2010.

<sup>221</sup> Interview with the former Minister of Justice Enkelejd Alibeaj, 2010.



considered promotion, where ‘often, promotion means an upgrade from one level court to another (i.e. from first instance to Appeal court)’.<sup>222</sup> These courts were not considered for the initial phase of the appointment for the new graduates of the School of Magistrates. And, according to several interviewed judges, this was another corrupt manoeuvre ‘orchestrated by the HCJ together with the MOJ to avoid judges graduated from this school to get in appeal and first instance urban courts and promote those who would be able to purchase the position’.<sup>223</sup>

It is not by chance that ‘Career courts’ are the most ‘lucrative courts’ or where the size of business transactions is higher than in other courts. According to the majority of interviewed judges this current promotion scheme was viewed as a pattern of judicial corruption. Considering the transfer of a first instance judge to first instance courts of Tirana or Durrës as a promotion is regarded by the community of lawyers as ‘a tool of the HCJ to generate bribes’.<sup>224</sup>

I had the opportunity to interview judges who had applied to the HCJ for promotion, and I asked them whether they were approached by any of the HCJ’s officials or its members to pay something, but none of them admitted personally to having had such an experience. However, almost all of them accepted that there were rumours that applicant judges ‘were asked to pay up to 50,000 euros for a transfer from a rural first instance court to Durrës first instance court and up to 70,000 euros for a transfer to the first instance court of Tirana. Prices for transfer to the appeal courts of Durrës and Tirana almost doubled to 150,000-200,000 euros.’<sup>225</sup>

For the High Court, alleged sums paid for promotion reach at least 250,000 euros.<sup>226</sup> In contrast, the level of bribe paid to be promoted to the Constitutional Court is lower than that to the appeals or the High Court, as ‘the Constitutional Court is not considered very “lucrative” as the flow of commercial cases is very low’.<sup>227</sup> There are rumours that ‘one current candidate proposed by the President for the High Court paid 250,000 euros but he was refused by parliament. The same judge was subsequently appointed by the HCJ as

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<sup>222</sup> According to the former Minister of Justice Enkelejd Alibeaj career is not ‘only the upgrade from one level of court to a higher level but also a transfer from a rural to an urban court’. Interview with former Minister of Justice Enkelejd Alibeaj, 2010.

<sup>223</sup> Interview with rural judge no.7, 2010.

<sup>224</sup> ‘... the notion of “career courts” is the notion of judicial corruption. ...it is a tool of the HCJ to generate bribes...the issue is very simple, the problem is economic, there (in the career courts) is the money, and there is the market...if you are promoted there you can take the “investment” back... So I think...that the goal of making the Court of Durrës and Tirana “career courts”, is like putting a price on the courts...’ Interview with rural judge no.2.

<sup>225</sup> ‘...I have heard about amounts of up to 20,000 Euros being offered in order to be accepted at the Magistrate School,... and I’ve also heard that judges were asked to pay up to 50,000 Euros for a transfer from a rural first instance court to Durrës first instance court and up to 70,000 Euros for a transfer to the first instance court of Tirana. Prices for transfer to the appeal courts of Durrës and Tirana almost doubled to 150,000-200,000 Euros...and 250,000 Euros were required to become a High Court judge...’ Interview with international observer no.2.

<sup>226</sup> Interview with international observer no.3, 2010.

<sup>227</sup> Interview with local observer no.1, 2010.

chief judge of an urban court. But as the “price” for this position was 50% cheaper, he was reimbursed the difference.’<sup>228</sup> The ‘price list’ of bribes shown by my interviewees is confirmed even by the Global Integrity Report on Albania 2010.<sup>229</sup>

## Misuse of Judicial Inspectorates

Another mechanism used by both the HCJ and MOJ is the misuse of judicial inspectorates. On rare occasions, inspections of judges, especially those by the inspectorate of the MOJ, have been politically motivated.<sup>230</sup> As shown above, the duties of each of the judicial inspectorates are often conflicting and confused. The perception by judges is that although slight progress has been made there have been cases where inspections are selective and based on double standards.<sup>231</sup>

Inspection can be used as a tool to ‘mute’ those judges who actively oppose defective laws and judicial policies. A member judge of the National Association of Judges (NAJ), who helped to challenge the new law of Judicial Power and that of the NJC before the Constitutional Court, reported that ‘immediately after the decision was issued by the Constitutional Court in their favour, suddenly, he was visited by the inspectors of the MOJ’.<sup>232</sup> There have been eight cases where inspections of the HCJ have been conducted while courts’ cases were still in process. And decisions by the HCJ to initiate these inspections were found by the Constitutional Court to be in violation of the Constitution.<sup>233</sup>

Judges also pointed out that the inspection procedure is ambiguous and opens up gaps for political pressure. A former Chief Judge of a first instance court pointed out that:

‘Although the procedure requires that the result of the inspection cannot be declared until the court’s decision becomes final,<sup>234</sup> the decision of the HCJ or Ministry of Justice to inspect a judge while the case is still in process in the first instance court, is a pressure and a signal sent to the appeal courts’ judges to understand the political motive, if the case were appealed there.’<sup>235</sup>

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<sup>228</sup> Interview with international observer no.3, 2010.

<sup>229</sup> See Global Integrity Report (2010) ‘Global Integrity Report: Albania, 2010’, Washington DC; available at <http://www.globalintegrity.org/report/Albania/2010/> [accessed July 11, 2011].

<sup>230</sup> Interview with HCJ inspector no.2, 2010.

<sup>231</sup> Interview with investigative journalist no.1, 2010.

<sup>232</sup> Interview with a member of the NAJ, 2010.

<sup>233</sup> Interview with urban judge no.2, 2010.

<sup>234</sup> The decisions of court become final in two situations, when the case has not been appealed and when the time for appeal has lapsed. And if the case is appealed, the decision of the appeal court then becomes final.

<sup>235</sup> Interview with urban judge no.1, 2010.

Since 2004, the Constitutional Court has highlighted that a decision of court can only be reviewed by a higher court and not by any other institution outside the court system, as this can otherwise be considered as an infringement of judicial independence.<sup>236</sup> In addition, while interviewed judges agreed that inspection is an important mechanism to hold judges accountable, they insist that 'this power should be given only to the HCJ as its inspectors are judges and not allowed to the MOJ, whose inspectors are not judges but simply individuals holding a law degree and without experience in the courts and whose selection often is politicised'.<sup>237</sup>

There were some differences among the interviewed judges regarding the role of the inspectorates. Those who were concerned about the selective use of inspection by the HCJ and MOJ were either former chief judges of urban first instance courts or simple judges in rural first instance courts. Those who were more relaxed were urban first instance court judges or chief judges of rural first instance courts.

When asked about the role of inspection, one chief judge of a first instance rural court said, 'inspection is a good thing; chief judges should be checked about their administrative role in the court'.<sup>238</sup> Another judge, of a first instance court from Tirana, was asked whether inspection was being used as a form of pressure, and her answer was that 'there are no double standards used by the inspectors, their focus is on the file and not on the judge'.<sup>239</sup> In fact, the majority of judges have been disciplined by the HCJ on the grounds of wrongful application of law (Zaganjori and Anastasi et al. 2011:178). This diversity of opinion among the community of judges shows that somehow the use of the judicial inspectorates for political reasons is more evident in urban courts where size of commercial cases is higher. To sum up, institutional independence is still a concern and political influence continues to be a problem.

I close this section with a quote from a chief judge of a rural court:

'In Albania it is very difficult to separate politics from other institutions. The parliament is political, executive is political, and then we talk about [the independence] of the judiciary... but chances are limited. I do not know whether the day will come [when the judiciary will be fully independent]... my hopes are zero.'<sup>240</sup>

Another form of dependency which is closely linked with institutional independence is operational dependence. The following section looks at how judicial independence is operationally obstructed.

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<sup>236</sup> See Decision of Constitutional Court no.11, dated May 27, 2004, p.3.

<sup>237</sup> Interview with the HCJ inspector no.1, 2010.

<sup>238</sup> Interview with rural judge no.3, 2010

<sup>239</sup> Interview with urban judge no.4, 2010.

<sup>240</sup> Interview with rural judge no.6, 2010.

## Operational Patterns of Control

In this section I focus on the tight budget allocated by the executive to the courts, poor salaries, lack of infrastructure and human resources, lack of a special budget for expert witnesses. I show the concerns of my interviewed judges and also point out how all these factors influence the performance of the judiciary. Operational dependency entails reliance by the judiciary on external resources because the budget allocated by the state to cover salaries, human resources and infrastructure is not sufficient.<sup>241</sup>

### The Budget

Operational dependency, as mentioned above, is about the dependence of the judiciary on external private resources. Budgets provided for the judiciary over the last decade are very low and insufficient to cover its needs. Almost all the judges I interviewed admit that this is having a 'significant influence on their work in terms of performance and efficiency'.<sup>242</sup> From 2001 to 2010, (except 2005), the average percentage of the state budget allocated to the judiciary was less than 1% of the total state budget (see Table 1 on budget trends for 2001-10). According to the 2010 European Commission Report on Albania (2010:19), the 'budgetary appropriations for the judiciary overall remain insufficient'. In 2011 Transparency International stated that 'In Europe, Albania has the lowest share of government spending dedicated to the judiciary, and judges' salaries are fifty per cent lower than those in neighbouring Kosovo.'<sup>243</sup>

**Table 1 Trends in the Courts' Budget, 2001-10**

Year	Budget of courts in Albanian Lek	Courts' budget as % of state budget
2001	998,139,000	0.60%
2003	1,102,413,000	0.77%
2004	2,100,552,000	0.89%

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<sup>241</sup> Interview with urban judge no.8, 2010.

<sup>242</sup> Interview with urban judge no.7, 2010.

<sup>243</sup> Transparency International (2011) 'EU Anti-Corruption Requirements: Measuring Progress in Albania, Kosovo, FYR Macedonia and Turkey', p.6.

<b>2005</b>	2,771,000,000	<b>1.74%</b>
<b>2006</b>	2,531,000,000	<b>1.63%</b>
<b>2007</b>	1,347,000,000	<b>0.64%</b>
<b>2008</b>	1,411,500,000	<b>0.56%</b>
<b>2009</b>	1,737,110,000	<b>0.67%</b>
<b>2010</b>	1,759,160,000	<b>0.76%</b>

Source: ABA/CEELI reports on Albania, 2004, 2006, 2008 and data from Albanian Ministry of Finance for 2010 state budget (data compiled by author).

In all international reports, and my interviews, judges claimed that the level of salaries is very low. According to a study by EURALIUS in 2006,<sup>244</sup> salary increases in Latvia had a very positive impact on the ranking of that country in Transparency International's corruption index – in stark contrast to Albania, which dropped down one place because of its lack of a long term strategy to increase salaries.<sup>245</sup> Judges claimed that because of poor salaries they 'could not afford to fulfil even their normal life expectations and that this has influenced their working standards'.<sup>246</sup>

The budget shortfall pressures judges to rely on external sources to assist the judicial process. Chief judges of courts use their private connections, which inevitably influences the independence of their courts. As one first instance rural court chief judge put it:

'Normally when I, as a chief judge, use my private connections to solve financial and administrative problems of the court, then it is normal to expect that I will serve these people when they ask for my help. This makes the judiciary dependent

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<sup>244</sup> See the European Assistant Mission to the Albanian Justice System (EURALIUS) (2006) 'Increase of Judicial Budget Aiming to Reduce Corruption Degree based on European Countries' Experience'. The material is not published and not made public.

<sup>245</sup> Interview with local observer no.3, 2010.

<sup>246</sup> '...take the economic factor, I think that the salaries of judges, when compared with their colleagues in Europe, are low, they cannot justify the workload and high responsibility...with these salaries judges could not even afford to fulfil their normal life expectations and this has influenced their working standards...' Interview with urban judge no.1. According to a rural advocate 'poor salaries of judges are a factor of judicial corruption, although they have the highest salaries of all the public officials in Albania. The low salaries of judges do not motivate them, they do not enjoy certain privileges or advantages related to their profession, for instance their security and social status is poor...so, lacking these elements, a judge will depend on favours made to him by others. If a doctor does a favour for him or a family member, the judge feels somehow obliged to pay it back. A judge cannot be independent from other segments of society. In this context we should provide judges with some more privileges, not only to protect them but also to protect us...unfortunately we do not have this concept of judicial independence.' Interview with rural advocate no.1.

and in a way to serve to the private donors regardless of our will. We are obliged to do that, simply for the sake of our work and not for our personal interests.<sup>247</sup>

In addition, another rural chief judge said that they have to ask international donors such as USAID for assistance, and that this requires chief judges to 'spend much time and energy on something that is not part of their duty'.<sup>248</sup>

## Infrastructure

Lack of infrastructure is another factor that obstructs the work of judges and drives them to find external ways to perform their duties. In general, judges highlighted that there has been a significant improvement in infrastructure of mainly the rural courts,<sup>249</sup> whereas in big courts such as the court of Tirana, there is not enough space and almost all courts' proceedings are held in the judges' offices.<sup>250</sup> In this court, only in the civil sector, there are 44 judges and only seven courtrooms to be shared and 'only 2% of scheduled Tirana civil sessions are held in courtrooms.... and for criminal cases, almost 93% are tried in offices'.<sup>251</sup> Many cases tried by a panel of three judges will be postponed because 'there is a lack of courtrooms and this makes it very difficult to allocate a suitable time for trials with a panel of judges'.<sup>252</sup>

Job conditions are another problem that influences judges' work. As mentioned above, the majority of cases are held in the judges' offices and this gives them very little time to work in privacy and comfort.<sup>253</sup> Most judges take 'files and work home and this leaves them limited time for private life or outside activity'.<sup>254</sup> Recently, there has been an increase in the incidence of judges suffering from mental health issues, and this has been attributed 'to the lack of comfort and the stressful work'.<sup>255</sup>

Lack of sufficient supporting staff such as secretaries or judges' assistants is another factor that impedes the performance of judges and increases the backlog.<sup>256</sup> In contrast to the

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<sup>247</sup> Interview with rural judge no.6, 2010.

<sup>248</sup> Interview with rural judge no.3, 2010.

<sup>249</sup> Interview with rural judge no.5, 2010.

<sup>250</sup> Interview with urban judge no.7, 2010.

<sup>251</sup> Lombard, P. and Stienstra, D. (2011) 'The Use of Courtrooms at the Tirana and Durres District Courts: Final Study Report', USAID Albania, p.1.

<sup>252</sup> Interview with rural judge no.3, 2010.

<sup>253</sup> Interview with urban judge no.9, 2010.

<sup>254</sup> Interview with rural judge no.7, 2010.

<sup>255</sup> Interview with urban advocate no.2, 2010.

<sup>256</sup> Interview with rural judge no.1, 2010.

High Court, Constitutional Court and serious crime courts (i.e. first and appeal court), where the situation generally seems to have improved, in many urban courts there is still a need for more supporting staff.<sup>257</sup> Rural courts (appeal and first instance) seem more organised in this respect, whereas courts in urban areas such as the courts of Tirana and Durrës lack supporting staff and do not have enough space.<sup>258</sup> ABA/CEELI (2006:51) states that in the court of Tirana ‘two to three judges share[d] one secretary’.

It should be mentioned that Albania has the lowest ratio of judges per capita in Europe.<sup>259</sup> For over four years the Inspectorate of the HCJ suggested that the number of judges in urban courts, especially appeal courts in Vlorë, Durrës and Tirana, be increased but this was not possible, at least formally, to be arranged until 2009.<sup>260</sup> To avoid the backlog, ‘many judges use their secretaries to write “simple” court decisions which do not require lengthy reasoning such as divorce cases’.<sup>261</sup>

Similarly, there are occasions when corrupt judges, after the case has been decided, ‘leave it to the advocate of the winning party, if they trust him, to write the court’s decision’.<sup>262</sup> In addition, there are judges who ‘employ private lawyers to help them prepare cases because their time is so tight. This usually happens in urban courts where the workload is higher’.<sup>263</sup> In 2010, this concern was raised by the Minister of Justice when he asked that all decisions be written by judges alone and further asked that procedures be devised that would make this process verifiable.<sup>264</sup>

Another significant problem is the lack of a special budget for experts in civil cases where parties in the process have low incomes and could not afford such experts (i.e. those individuals exempted from the court’s tax because of their low income). In this situation, ‘there is currently no solution provided and on many occasions the process goes into deadlock’.<sup>265</sup>

There is no travel subsidy for judges who live in a different city from where they work. Travelling by low cost public transport makes judges vulnerable to crime and social

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<sup>257</sup> Interview with urban advocate no.8, 2010.

<sup>258</sup> See the report by the European Assistance Mission to the Albanian Justice System (EURALIUS), ‘Backlog Analysis of Albanian Courts 2002-2005’, sent to the Ministry of Justice, January 15, 2007, pp.11-12.

<sup>259</sup> Transparency International (2011) ‘EU Anti-Corruption Requirements: Measuring Progress in Albania, Kosovo, FYR Macedonia and Turkey’, p.6.

<sup>260</sup> Interview with HCJ inspector no.2, 2010.

<sup>261</sup> Interview with urban advocate no.2, 2010.

<sup>262</sup> Interview with urban advocate no.2, 2010.

<sup>263</sup> Interview with rural judge no.7, 2010.

<sup>264</sup> Interview with urban advocate no.2, 2010.

<sup>265</sup> Interview with urban judge no.8, 2010.

pressure,<sup>266</sup> and could even endanger their lives. One judge of the Serious Crime Court pointed out that:

‘I travel to Tirana every day using public transport. Many times I have seen family members of accused criminals travelling in the same bus with me. How safe does that make me feel? And I link this with the lowest budgets for courts. As a judge I feel totally unprotected on the street.’<sup>267</sup>

This section has examined both institutional and operational dependence and has shown how they serve to influence the independence of the judiciary. But there is another form of judicial dependence, one that has not yet been explored by either international or local reports, or indeed the literature in general. This is the structural interdependence of judges within the judiciary.

The following section will demonstrate that the Albanian interdependence of judges is multilayered. The most influential category of judges manages the distribution rights of promotions in the first instance and appeal courts by advancing the careers of members of its network and stalling others. Let us see how this mechanism works.

## Inner Structural Interdependence

My interviews suggest that there is an inner structural interdependence among judges. In the context of this study, structural interdependence of the judiciary means a parallel hierarchy within the judiciary where certain categories of judge control others informally. According to the BPJC, judicial independence ‘requires not only the dependence of the judiciary as an institution from the other branches of government; it also requires judges being independent from each other’ (Commentary 2007:50).

There are four main categories of judge that are active in the judicial system today. First, judges who have worked during the communist period, known by the public as ‘former communist judges’ (gjyqtaret e komunizmit); second, judges who completed their studies in the late 1980s (during the communist period) but were employed during the early phase of the political transition to democracy in 1990-2000<sup>268</sup> (hereafter referred to as ‘judges of transition’); third, graduates from non law backgrounds who became judges after completing short intensive courses (i.e. six to nine months) during 1992-93, commonly known as ‘six-months judges’; and fourth, judges who graduated from the School of Magistrates and began practising in 2000 (hereafter referred to as ‘Magistrates’).

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<sup>266</sup> Interview with rural judge no.7, 2010.

<sup>267</sup> Interview with urban judge no.4, 2010.

<sup>268</sup> Many of them were working as professional judges’ assistants when in the late 1990s this institution lapsed and judicial structure reformed and they all became judges.



My analysis will focus only on the corrupt fraction of these categories but who are yet very influential. When I mention one category I do not wish to imply that all judges within the category are corrupt. There are many honest judges in all the described categories, but my interviews suggest that their role is insignificant in influencing the HCJ and NJC.

There were two main waves of political influence during the post-communist period which helped the first three categories of judge to establish and strengthen their positions within the judicial system.

### **First Wave (1992-96)**

The first wave occurred in 1992-96 (ABA/CEELI 2004:3) when the country was governed by right-wing political forces represented by the Democratic Party (DP). In the early phase of transition in 1990-93, Albania was in need of judges with a new perspective regarding the application of the rule of law. The judiciary, in theoretical terms, was applying democratic principles but in practice these new legal concepts were enforced by judges educated by and who worked in the communist system (Prato 2004:79).<sup>269</sup>

Due to this emergent need the DP began a judicial reform based mainly on two premises. First, to remove 'former communist judges', especially those having a criminal past, and second to replace them with lawyers educated in the late 1980s but who began practising law in the early 1990s ('judges of transition'), as they were not involved in judicial processes during the communist period.<sup>270</sup> As many 'former communist judges' were moved, the number of vacancies in the judiciary increased. To fill this gap, in addition to 'judges of transition', the DP organised short and intensive courses for judgeship. Some of the new judges were individuals supposedly recruited from families persecuted for political reasons during the communist regime.<sup>271</sup>

The conditions for becoming a judge were unprecedented: 'every candidate with a university degree usually other than law (a few had finished high school only) went for an intensive six-month course and immediately became a judge'.<sup>272</sup> A degree in law was not a prerequisite and even people holding degrees in 'agriculture, medicine or engineering were allowed to enrol on these courses'.<sup>273</sup> The true criterion was political affiliation to the DP. It

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<sup>269</sup> Interview with rural prosecutor no.4, 2010.

<sup>270</sup> Interview with urban advocate no.1, 2010.

<sup>271</sup> Interview with urban judge no.1, 2010.

<sup>272</sup> Interview with urban judge no.6, 2010.

<sup>273</sup> Interview with urban advocate no.6, 2010.

sufficed that an applicant be a strong supporter or worked in the administration or in the Party's structures.<sup>274</sup>

Candidates selected by the executive were scrutinised and 'sometimes even suggested by the Albanian secret service of that time, the so-called "SHIK" (i.e. the National Information Service)'.<sup>275</sup> In addition, the DP approved a specific law in 1995, commonly known as 'the law of lustration'. This law was another political tool used by democrats to clear the judiciary of former communist remnants (Austin and Ellison 2009). Many former communist judges were not allowed even to practise law as advocates.<sup>276</sup> The law of lustration further increased the power of 'six-months judges' because their number increased in the system. The latter advanced and 'replaced professional but politically-attacked judges'.<sup>277</sup>

The judicial reform weakened the category of 'former communist judges'. In the period 1990-93, of eleven judges in the High Court (then the Court of Cassation) only three were re-elected.<sup>278</sup> Almost all 'former communist judges' were purged from the system, starting with the High Court and later the first and appeal courts. It should be noted that many of them remained active and went on to practise as either advocates or public notaries.<sup>279</sup> The aim of both political camps, however, was to keep some 'former communist judges' in the system as it was very easy to control them through 'the use of their past files assembled by the former secret service, the "Sigurimi"'.<sup>280</sup>

In the first wave of judicial reforms in 1992-96, 'six-months judges' was the dominant category in the system. The majority of my interviewees confirmed that 'six-months judges' were highly politicised and in full control of the executive at that time. There were two reasons for that. First, these judges were proposed by the political elite which possessed files for each of them, files that were used to blackmail them when necessary. Second, their professional background was poor and this made them easier targets for the inspectorates of both the HCJ and the Ministry of Justice.<sup>281</sup>

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<sup>274</sup> '... it was a criterion that candidates should have a university degree... a law university degree was not a condition... there were candidates holding degrees in agriculture, medicine, engineering who were allowed to enrol on these courses...so all these people who had the right connections with DP and became jobless during the transition were very quickly absorbed and recruited for six-month courses. It was the political criterion which was the most important factor for joining these courses...' Interview with rural advocate no.1, 2010.

<sup>275</sup> Interview with investigative journalist no.2, 2010.

<sup>276</sup> Interview with academic no.1, 2010.

<sup>277</sup> Interview with rural advocate no.1, 2010.

<sup>278</sup> Interview with academic no.1, 2010.

<sup>279</sup> Interview with urban judge no.10, 2010.

<sup>280</sup> Interview with investigative journalist no.2, 2010.

<sup>281</sup> Interview with urban advocate no.6, 2010.

The political elite have always tried to promote themselves to key positions in the judicial system.<sup>282</sup> Today a few of them can even be found in the HCJ and in the High Court.<sup>283</sup> They have become a great obstacle for the 'Magistrates' to advance in the system.<sup>284</sup> This new wave of judiciary has triggered a form of competition between 'former communist judges', 'judges of transition' and the 'six-months judges'.<sup>285</sup> However, the role of 'six-months judges' was to weaken in the second wave of judicial reform.

## **Second Wave (1998-2000)**

This second wave began in 1998 when the Socialist Party came to power amid a near civil war during 1997 (Jarvis 2000). In stark contrast to democrats, the socialists used another political tool to lustrate the judiciary from the supporters of their political adversaries. In 1999, they organised a professional test targeting the 'six-months judges'.<sup>286</sup> Around 30 judges refused to take the test and of those who participated only four failed, one repeated the test and passed.<sup>287</sup>

Almost all of those who refused to take the exam were from the 'six-months judges' category. As a consequence, only a few 'six-months judges' remained in the system.<sup>288</sup> In addition to that, socialists attacked the lustration law and argued that this law was in violation of the Constitution. With this move, the socialists allowed those 'former communist judges' who were still part of the system to retain their positions in the judiciary and those outside to practise law as advocates or public notaries.<sup>289</sup>

'By the end of 1998, both these categories of judge were highly politically polarised. The "former communist judges" were supported by the socialists and the "six-months judges" were backed by democrats.'<sup>290</sup> However, judges from both categories were not

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<sup>282</sup> Interview with investigative journalist no.1, 2010.

<sup>283</sup> Interview with investigative journalist no.2, 2010.

<sup>284</sup> Interview with urban judge no.2, 2010.

<sup>285</sup> Interview with urban prosecutor no.4, 2010.

<sup>286</sup> Interview with urban advocate no.6, 2010.

<sup>287</sup> Organisation for Security and Co-operation in Europe Presence in Albania (2004) 'Legal Sector Report for Albania', p.17.

<sup>288</sup> Interview with rural advocate no.1, 2010.

<sup>289</sup> Interview with academic no.1, 2010.

<sup>290</sup> ' By the end of 1998, both these categories of judge were highly politically polarised. The "former communist judges" were supported by the socialists and the "six-month judges" were backed by democrats.... Each of the political forces supported their respective groups during their time in government. These two categories of judges continue to hamper the power of the judiciary to self-govern and become independent from political powers. These groups of judges obstruct judicial

quantitatively the dominant groups in the system. Another category that emerged during 1990-2000, 'judges of transition', was growing and becoming stronger. This category has never been attacked directly by political parties. The 'judges of transition' were used interchangeably by both political spectrums.<sup>291</sup> A good part of this category advanced in the system and gradually influenced the promotions of judges after 2000.<sup>292</sup> The 'judges of transition' was an amalgam of judges poured into the system by both democrats and socialists, so 'they were very flexible, opportunist and financially powerful'.<sup>293</sup>

Until the current Law of Judicial Power entered into force in 2008, there were three ways to recruit judges other than from those who had graduated from the SOM and these possibilities were all exploited by the political elite.<sup>294</sup> All these channels were suitable for those candidates falling into the category of 'judges in transition'.<sup>295</sup> It should be mentioned however, that priority was given to those who had graduated from the SOM (ABA/CELLI 2001:2). Several judges I interviewed pointed out that "'Magistrates" were expected to be the most qualified judges and their professional impact was felt immediately in the system'.<sup>296</sup>

Before the first class of 'Magistrates' entered the judicial system in 2000, former categories of judges had already consolidated their positions.<sup>297</sup> After a decade of democracy, the borderlines between 'former communist judges', 'judges of transition' and 'six-months judges' gradually started to fade away. A culture of political control over the judiciary was formed.<sup>298</sup> All three categories were used interchangeably by both the executive and legislature. A few of the judges I interviewed highlighted that all first three categories, and especially 'judges of transition', felt somehow threatened by the 'Magistrates'.

With support 'from the political elite, some networks from the "judges of transition" have exploited the judiciary using legal tools'.<sup>299</sup> A significant tool was the ten years work experience requirement stipulated in the law for a 'Magistrate' judge to become a member of the HCJ. And this 'legal obstacle barred all "Magistrates" from having any influence in the HCJ'.<sup>300</sup> The distribution of promotion rights in the first and appeal courts was therefore

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independence because of the connections they have with those political groups from which they are derived...'Interview with urban judge no.2, 2010.

<sup>291</sup> Interview with urban advocate no.4, 2010.

<sup>292</sup> Interview with rural judge no.2, 2010.

<sup>293</sup> Interview with the investigative journalist no.2, 2010.

<sup>294</sup> Interview with the urban advocate no.4, 2010.

<sup>295</sup> Interview with rural judge no.7, 2010.

<sup>296</sup> Interview with rural judge no.1, 2010.

<sup>297</sup> Interview with urban judge no.2, 2010.

<sup>298</sup> Interview with urban prosecutor no.4, 2010.

<sup>299</sup> Interview with rural judge no.2, 2010.

<sup>300</sup> Interview with urban advocate no.6, 2010.

managed by the 'judges of transition' through their dominant control over both the HCJ and the NJC.<sup>301</sup>

## Inner Structural Patterns of Control

Initially, when the number of 'Magistrates' was insignificant in 2001, powerful networks from the category of the 'judges of transition' seem to have used the power of the majority vote in the NJC to nominate representatives from this category as members of the HCJ.<sup>302</sup> Numerically they were dominating the NJC. A pattern of 'clientelism' informed influential and less influential judges in the system. From 2001, various international reports evidenced that 'judges appointed or advanced through the system are sometimes said to feel a moral obligation to provide preferential treatment in court matters to those who were behind their appointment' (ABA/CEELI 2001:17).

Later on, prior to enactment of the new NJC's Law in 2005, each judge was a member of the NJC, bearing the right to vote on every decision, including proposals for membership of the HCJ. Because of this voting arrangement in the NJC, 'the strengthening of networks based on friendship ties among judges became significant'.<sup>303</sup> Judges who wanted to become members of the HCJ 'started to lobby their colleagues and ask for their support. Political support was an important bonus too.'<sup>304</sup>

The search for votes among fellow judges therefore gradually changed the layers within the judiciary and judges became divided into two big categories, 'Magistrate' and 'non-Magistrate'.<sup>305</sup> And the emergence of the 'Magistrate' served as a kind of social bond between the other three categories. "'Magistrates" were perceived as a threat to all former categories because they were less politicised; they were more professional and numerically speaking they had a future'.<sup>306</sup> According to the Law on Judicial Power, 90% of the recruited judges should have graduated from the SOM.<sup>307</sup>

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<sup>301</sup> Interview with rural judge no.7, 2010.

<sup>302</sup> Interview with rural judge no.10, 2010.

<sup>303</sup> Interview with rural judge no.2, 2010.

<sup>304</sup> 'For two years now (2010) the NJC has not met and has not been able to select its representatives in the HCJ, and the current cohort will continue until they are replaced. Those judges who expressed a wish to get promoted in the HCJ started to lobby their colleagues and ask for their support. Political support was an important bonus too.' Interview with rural judge no.3, 2010.

<sup>305</sup> Interview with urban prosecutor no.4, 2010.

<sup>306</sup> Interview with urban judge no.2, 2010.

<sup>307</sup> Law no.9978, dated February 18, 2008, 'On Organisation of Judicial Power in the Republic of Albania', art.11.

As the number of the 'Magistrates' rose and their voting power in the NJC increased, another sudden move occurred. A new law prepared during socialist rule in 2004 but approved in parliament while democrats were in power in 2005, is believed to have been proposed by high ranking 'non-Magistrate' judges.<sup>308</sup> The new law of the NJC was copied from the Law on the Judicial Conference in the United States (ABA/CEELI 2006:42), although Albania has a different court structure and legal system. This law created a structure of control within the NJC where one-third was composed of *ex officio* members such as judges of the High Court and chief judges of first and appeal courts. The latter mostly belonged to the category of 'non-Magistrate' judges.<sup>309</sup> The other two-thirds was selected based on a representative format where each regional court had to select its representatives.<sup>310</sup>

So in stark contrast to the previous law of the NJC where each judge automatically became a member of the NJC and had a right to vote, the new law removed the possibility for the 'Magistrates', who were increasing in number, to influence the NJC. This law also formalised a parallel hierarchy of judicial control within the judiciary by giving the *ex officio* members of the NJC, such as the Chief Judge of the High Court and chief judges of courts of appeal, a significant power over their colleagues.<sup>311</sup>

The NJC operated in this way for three years from 2005, until the new NJC law was found unconstitutional by the Constitutional Court in 2008. As mentioned above, in addition to friendship ties and political support, the new organisational structure of the NJC triggered by the 2005 law involved other informal criteria for judges to support each other such as regionalism/'Krahinizem' which is where judges support those candidates which they share the same region/jurisdiction.

Usually, judges coming from bigger regions such as Vlora, Tirana or Durrës had more chances.<sup>312</sup> No judge from the courts of Korça city for instance, has been a member of the HCJ since its creation.<sup>313</sup> However, the majority of interviewed judges mentioned that this is not about Krahinizem but is more about friendship ties because many judges work in a different city from where they live.<sup>314</sup> So judges are more willing to help the candidate they share the same court with rather than the one with whom they share the same origin and 'this is the reason why the majority of member judges in the HCJ come from big courts such as Tirana'.<sup>315</sup>

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<sup>308</sup> Interview with rural judge no.7, 2010.

<sup>309</sup> See Law no.9399, dated February 12, 2005, 'On the Organisation and Function of the National Conference of Judges', art.4.

<sup>310</sup> Ibid.

<sup>311</sup> Interview with rural judge no.7, 2010.

<sup>312</sup> Interview with local observer no.1, 2010.

<sup>313</sup> Interview with rural judge no.3, 2010

<sup>314</sup> Interview with urban judge no.5, 2010.

<sup>315</sup> Interview with local observer no.1, 2010.

Also as mentioned above, a culture of ‘clientelism’ formed among judges. Those having strong networks within the NJC arranged to become members of the HCJ with the support of politicians.<sup>316</sup> In exchange, those elected on the HCJ would promote their supporters and establish a deal with representatives of the executive to get promoted later on, either in the ‘Career courts’ and appeal courts of Tirana and Durrës or in the High Court or Constitutional Court.<sup>317</sup>

Where political support remained significant, the purchasing of positions flourished.<sup>318</sup> In the period 2005-10 the support and power of the structures within the system became highly commercialised. This was another factor in explaining how the three former categories became united.<sup>319</sup> They had more time in the system and exploited it to greater extent. They had ‘the right connections with business and the underworld, political support, and were financially capable of “purchasing” or “trading” the influence’.<sup>320</sup> Not only were ‘non-Magistrate’ judges who controlled the HCJ exploiting the system but they were also exploiting their colleagues. They not only influenced the disbursement of promotion rights generally but they also received favours from judges they had ‘helped’ to get promoted in a form of gratitude or exchange of favours.<sup>321</sup>

My interviews suggest that an important role in the commercialisation of promotions was played by both the current Chairman of the HCJ (i.e. President of the Republic) and its Vice Chairman until 2012.<sup>322</sup> Judges promoted during 2007-10 were not the most qualified. As one international observer highlighted, ‘I’m afraid the judges who have been appointed by the current president have a particularly poor track record.’<sup>323</sup>

The following example illustrates this point. An advocate practising law was proposed by the HCJ for appointment in a rural court and the President gave his approval in 2010.<sup>324</sup> Almost six months later the prosecution office accused this judge of corruption while he was practising law in private as an advocate. The HCJ was asked by prosecutors to remove the immunity of this judge in order to pursue the criminal proceedings according to the law. The request was accepted and the immunity was removed by the HCJ,<sup>325</sup> but this case

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<sup>316</sup> Interview with rural judge no.2, 2010.

<sup>317</sup> Interview with investigative journalist no.2, 2010.

<sup>318</sup> Interview with investigative journalist no.1, 2010.

<sup>319</sup> Interview with investigative journalist no.2, 2010.

<sup>320</sup> Interview with rural advocate no.1, 2010.

<sup>321</sup> Interview with urban judge no.7, 2010.

<sup>322</sup> Interview with urban advocate no.2, 2010.

<sup>323</sup> Interview with international observer no.1, 2010.

<sup>324</sup> See point 4 of HCJ Decision no.271, dated December 16, 2010; available at <http://www.kld.al/vendim271> [accessed September 21, 2011]. See also the President’s Decree no.6811, dated December 21, 2010, approving the proposal of the HCJ; available at <http://www.president.al/shqip/info.asp?id=6326> [accessed September 21, 2011].

<sup>325</sup> See HCJ Press Conference June 22, 2011; available at <http://www.kld.al/node/342> [accessed September 21, 2011].

again raised serious doubts about the selection procedures followed by the HCJ and the institution of President.

The judiciary today is influenced by ‘non-Magistrate’ judges and mostly from those judges pertaining to the category of ‘judges of transition’. They are present in urban appeal courts, the High Court and the Constitutional Court.<sup>326</sup> In the High Court, of 17 (one place is still vacant) only two are ‘former communist judges’, and the remainder including the Chief Judge, come from the category of ‘judges of transition’.<sup>327</sup> In the Constitutional Court the balance changes, where out of nine judges (one place is still vacant) four come from those educated during the communist period and who formerly worked in different positions such as prosecutors, investigators or academics; and the remainder are judges educated during the transition period and who formerly practised law whether as judges or legal experts during 1993 and after.<sup>328</sup>

It should be noted that while there remain legal barriers (15 years of work experience)<sup>329</sup> for ‘Magistrates’ to become judges of the Constitutional Court, they do not have the same problem when being appointed in High Court. The requirement for the latter is ten years and this allows ‘Magistrates’ from the first generation to be eligible.<sup>330</sup> All chief judges of the appeal courts, High Court and Constitutional Court come from ‘non-Magistrate’ judges. In contrast, the majority of ‘Magistrates’ work in first instance courts, only a few of them are in the appeal courts and only three serve as chief judges in first instance courts.<sup>331</sup> For example, up to 2011 there was no ‘Magistrate’ employed in the career court of Durrës.<sup>332</sup>

Although ‘Magistrates’ make up 50% of the total number of judges their influence is weak. At least 80% of them work in the first rural courts.<sup>333</sup> As one ‘Magistrate’ pointed out, “‘non-Magistrates’ have always tried to keep us in the lower courts and this is shown even in the latest promotion [2010] where out of 17 vacancies opened in the appeal courts only one magistrate was promoted’.”<sup>334</sup>

However, while only one ‘Magistrate’ became a member of the HCJ in 2011 another one proposed by the President of the Republic, Judge Manjola Bejleri, was refused in the same

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<sup>326</sup> Interview with urban judge no.10, 2010.

<sup>327</sup> See CVs for High Court judges at its official website; available at <http://www.gjykataelarte.gov.al/> [accessed July 20, 2011].

<sup>328</sup> See bios of each judge of the Constitutional Court on its official website; available at <http://www.gjk.gov.al/> [accessed July 20, 2011].

<sup>329</sup> See Law no.8577, dated February 10, 2000, ‘For the Organisation and Function of the Constitutional Court of the Republic of Albania’, art.7.

<sup>330</sup> See Law no.8588, dated March 15, 2000, ‘For the Organisation and Function of the High Court of the Republic of Albania’, art.3.

<sup>331</sup> Interview with rural judge no.7, 2010.

<sup>332</sup> Interview with rural judge no.7, 2010.

<sup>333</sup> Interview with urban judge no.2, 2010.

<sup>334</sup> Interview with urban judge no.2, 2010.



year by the hearing commission of parliament. It should be emphasised that she is the head of the NAJ, which brought several laws before the Constitutional Court in 2009.<sup>335</sup>

On the other hand, my interviews suggest that the quality of the 'Magistrates' has worsened and that many of them have 'quickly adapted to the system and its patterns of judicial corruption'.<sup>336</sup> There is growing concern from the community of judges and lawyers regarding the quality of 'Magistrates' too. The first three generations of 'Magistrates' (2000-03) are highlighted as being better in terms of quality and expertise compared to later ones.<sup>337</sup> Their politicisation was also emphasised by some interviewees as being of concern. There are individuals or even networks among the category of 'Magistrates' who have political support and are promoted in first instance urban courts either as judges or prosecutors.<sup>338</sup> 'Magistrates' tend to be very ambitious and some of them have quickly grasped the patterns of judicial corruption, so they engage in politics in order to advance their careers.<sup>339</sup>

A few interviewed judges noted however that although there is a tension between different categories of judges in the system they tend to support each other (e.g. by hiding their material mistakes in a court case) on possible charges of corruption. This includes prosecutors as well. One judge recalled that once he was trying a case where his colleague was accused of tampering with the evidence. The prosecutor of the case came and said to him 'try to protect him...he is your colleague'.<sup>340</sup>

Therefore, all laws related to the Judicial Organisation, HCJ, the SOM and especially the Constitution, improved the independence of the judiciary from the executive and legislature but did not avoid the structural interdependence from parallel structures within. In 2005, the role of politics became more external and its influence was more focused on the appointment of the High Court and Constitutional Court judges. Promotions to urban first and appeal courts were more controlled by judges who were members of the HCJ.<sup>341</sup> Patterns of inner judicial control became more commercialised. Currently, 'judges of transition' are the most powerful category of judges dominating the system. It is certainly premature to consider all 'judges in transition' corrupt or unprofessional (see Figure 4 below). There is a general perception that honest judges coming from this category can mostly be found in first instance rural courts.

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<sup>335</sup> *Shqip Gazette* (2011) 'Bejleri: The Report filed against me is based on nonexistent facts' (Bejleri: Relacioni kunder meje eshte ngritur mbi fakte te paqena), June 16.

<sup>336</sup> Interview with rural advocate no.1, 2010.

<sup>337</sup> Interview with rural judge no.1, 2010.

<sup>338</sup> 'Even "Magistrates" have their political preferences, and they too are at certain times promoted based on their political views...those who have more political support from the political party in power have higher chances to upgrade, but I cannot say that this is a phenomenon...' Interview with rural advocate no.1, 2010.

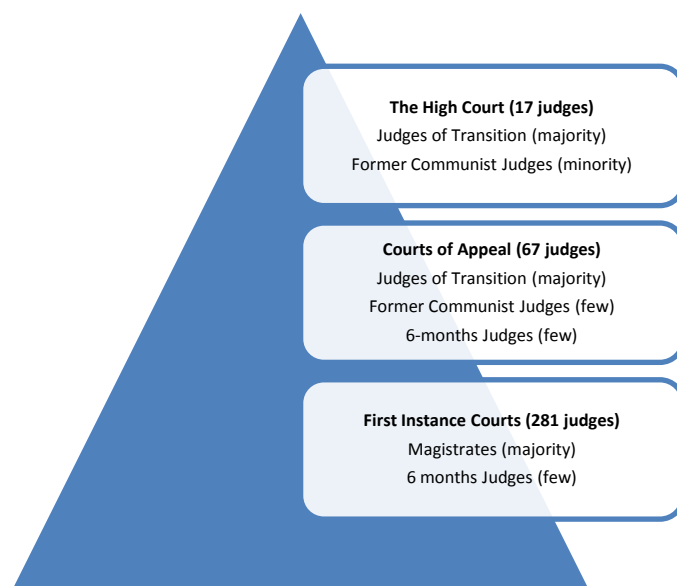
<sup>339</sup> Interview with local observer no.1, 2010.

<sup>340</sup> Interview with rural judge no.7, 2010.

<sup>341</sup> Interview with urban judge no.1, 2010.

On the other hand, there is an increasing trend for ‘Magistrates’ to conform to the system and become politicised and corrupt. My interviews underline that the quality of ‘Magistrates’ is decreasing and they too are becoming prone to corruption. Judicial independence therefore suffers from an inner control and parallel hierarchy mostly dominated by ‘judges of transition’. A tension between different categories of judges is formed who compete for power and this appears to be weakening the judiciary.

**Figure 4            Layers of Judges’ Categories within the Judiciary**



To summarise, my data in this chapter demonstrated that obstruction of judicial independence in Albania should be examined from a range of different perspectives. Judicial independence is anchored to institutional, operational and structural structures. Institutionally, there are constitutional safeguards that provide immunity for judges from political pressure. However, specific laws which regulate the functioning of the judiciary still leave space for the executive to influence the judiciary externally via shortage of budget and from within by undermining the HCJ and NJC. The weakening of the latter institutions has created a tension between different categories of judges which struggle for power and control of both the HCJ and NJC, and thus the judiciary is gripped from within by more powerful ranking judges. Having explained patterns of judicial corruption in the context of judicial independence, I will now turn to other values embodied in the BPJC and focus more on their influence on the individual misconduct of judges.

## OTHER FACETS OF JUDICIAL CORRUPTION

In Chapter 4, my data showed the institutional patterns of judicial corruption in the context of judicial independence. The focus was on the organisational factors (i.e. political influence, defective judicial laws and inner structure obstacles) and the ways in which they influence the efficiency of the judiciary (Buscaglia 2001:235). These factors are related and known in the literature as institutional aspects of judicial corruption.<sup>342</sup> The current chapter is also part of the data section of the thesis and should be read in that context. While the data in this chapter explains the landscape of judicial corruption from the perspective of the individual behaviour of judges, it also indicates other institutional factors which are evidenced in other aspects of the judges' conduct, such as factors which influence their impartiality, integrity and propriety. I also explore the Albanian-specific conditions and structures which challenge what the Bangalore Principles of Judicial Conduct (BPJC) do not necessarily or readily allow for.

### Impartiality

Impartiality is an important value in the BPJC. It might seem difficult to distinguish this value from 'independence', but in practice they are different. According to the Commentary (2007:57), 'a judge could be independent but not impartial...but a judge who is not independent cannot, by definition, be impartial (on an institutional basis)'. Impartiality requires an absence of subjective elements (i.e. personal views, prejudice and bias) and the presence of objective elements (i.e. it must offer sufficient guarantees to exclude any legitimate doubt in this respect) (ibid:58). Impartiality should not only be apprehended but also be demonstrated (ibid:59). Informal communication (i.e. *ex parte*) with parties is considered a violation of impartiality (ibid:62). In this respect judges should avoid any direct or indirect relation with the subject or object of the case which may influence his impartiality. This is otherwise known as conflict of interest.<sup>343</sup>

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<sup>342</sup> For a discussion of definitions and judicial corruption, see for instance 'Evaluation of Judicial Corruption in Central America and Panama and the Mechanisms to Combat it' (Due Process of Law Foundation, 2007); available at <http://www.dplf.org/uploads/1196091774.pdf> [accessed September 15, 2011].

<sup>343</sup> Law on Judicial Power 2008 arts.22, 23.

Impartiality in the court process in Albania remains a great concern and is perceived as problematic even by the community of judges.<sup>344</sup> As in many countries, judges in Albania are required by law to withdraw from a case when a conflict of interest arises. This includes economic, business, administrative, familial, or any 'other situation where serious bias is proved' (Civil Procedure Code arts.72-75; Criminal Procedure Code arts.15-17). But judges cannot recuse for reasons other than those stipulated in the law as this may obstruct the judicial process.<sup>345</sup> For instance, judges cannot withdraw from a case because of the heavy workload (ABA/CEELI 2008:42).

In terms of family ties, the legal term used for the conflict of interest extends up to fourth cousins and in-laws of parties or their advocate with a judge or his spouse (Civil Procedure Code art.72; Criminal Procedure Code art.16). Whereas similar conditions for conflicts of interest apply to prosecutors (Criminal Procedure Code art.26) and court staff (Criminal Procedure Code art.23), they do not apply to judicial police. There is also no specific law that covers conflict of interest where the same advocate represents several co-defendants.<sup>346</sup> In addition, even the wording used in the Albanian Code of Judicial Ethics is very broad and not specific.<sup>347</sup>

Conflicts of interest arise even in the procedural terms where a judge has previously been involved in the case whether as witness, prosecutor, or even as a judge in another instance of the court (Criminal Procedure Code art.15). In practice, the latter requirement has caused an anomaly in the serious crime courts, especially in cases appealed on pre-trial judgment. Such cases are judged by a panel of three judges (Criminal Procedure Code art.14.3). According to ABA/CEELI (2008:42), 'If the defendant goes to trial, all the judges who presided over the pre-trial hearing in the first instance and on appeal are disqualified. The court simply does not have enough judges to staff a panel, and will often call on the criminal division of the nearby Tirana District Court to loan judges for the case.'

Each party in the case has the right to ask the judge to withdraw if there are grounds for conflict of interest (Civil Procedure Code arts.74-75; Criminal Procedure Code arts.18-230). But if the request is not made according to the procedures and found as unjustifiable by the court, it will be disqualified and a maximum fine of 20,000 Albanian Lek (around £150) will apply (Civil Procedure Code art.76). The legal conditions for both forms of recusals either when it is triggered by the judge himself or when the recusal is required by litigants are the same, the procedures however differ.<sup>348</sup> In the recusal process, with his own

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<sup>344</sup> IDRA 2009 shows that from those surveyed only 16% of the general public and 20% of public sector employees agreed with the general statement that 'judges in Albania are impartial in conducting trials'. In addition, the judges' perception in this respect was staggering: 82% of judges surveyed agreed with the above statement. IDRA (2009) 'Corruption in Albania: Perception and Experience, Survey 2009, Summary of findings', pp.5, 24.

<sup>345</sup> Interview with urban advocate no.1, 2010.

<sup>346</sup> Organisation for Security and Co-operation in Europe Presence in Albania (OSCE) (2006) 'Analysis of the Criminal Justice System of Albania: Report by the Fair Trial Development Project', p.73.

<sup>347</sup> According to the Rule 3 of the Code of Judicial Ethics, 'a judge should not allow that any of his family members, relatives or *other persons* to influence his work and decisions' (emphasis added).

<sup>348</sup> Interview with urban advocate no.2, 2010.

initiative, the judge summons a request to the chief judge of the court and the latter decides whether to honour the request or not. By contrast, when a request for the judge's withdrawal is made by either party in a civil process, it is for the judge of the case in hand to accept it or not (Civil Procedure Code arts.73-75).

In the second scenario, one conflict of interest is replaced by another.<sup>349</sup> This is because every judge, before examining the case, makes sure that no conflict of interest arises by checking whether he has any connection with the case at hand which according to the law can disqualify him. And this large discretion makes it very difficult or almost impossible that the judge will accept the request of the parties to recuse.<sup>350</sup> One advocate I interviewed added that 'if parties ask a judge to withdraw, they have to bring evidence, so the burden of proof shifts to the parties. And again this makes it very difficult to generate evidence as this may require dealing with the privacy and Data Protection Act 2008.'<sup>351</sup>

However, figures show that the general public is well informed about the procedure on how to file a claim if they have doubts on the administration of the process or the fairness of the court's decision. According to ABA/CEELI (2008:48): 'In 2006, the HCJ registered 776 complaints, in 2007 – 787 complaints, and in 2008 – 2,101 complaints.' There is no specific or clear law on occasions of friendship between parties and judges or on the links between the judge's family members and any party in the process. In addition, the law does not cover the friendship ties between parties and court secretaries, prosecutors and judicial police.<sup>352</sup> The law is also unclear on situations where there is a family relation or friendship tie between the shareholders of a law office and the judge.<sup>353</sup> However, my interviews suggest that in the last five years the number of cases where judges withdraw for conflict of interest is increasing, as according to a prosecutor, 'judges know that they can be very easily attacked on the grounds of the conflict of interest'.<sup>354</sup> This fact implies that judges are trying to hide obvious patterns of corruption and sophisticate them more using third parties or law offices to negotiate with litigants. I speak below about this pattern. It should be noted that advocates can abuse requests for withdrawal and often they use this to delay the procedures (ABA/CEELI 2001:20).<sup>355</sup>

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<sup>349</sup> Interview with urban advocate no.2, 2010.

<sup>350</sup> Interview with urban advocate no.8, 2010.

<sup>351</sup> Interview with urban advocate no.2, 2010.

<sup>352</sup> See Civil Procedure Code arts.72-75; Criminal Procedure Code arts.15-17.

<sup>353</sup> Interview with the urban prosecutor no.2, 2010.

<sup>354</sup> Interview with urban prosecutor no.1, 2010.

<sup>355</sup> Interview with urban judge no.11, 2010.

## Patterns of Friendship Influence

My interviews suggest that impartiality can be obstructed by two forms of friendship – professional and local.

Professional friendships often come through education. There are only three public law schools in Albania and the majority of magistrates come from the same school of law, the University of Tirana, Faculty of Law.<sup>356</sup> There have been occasions when judges have had cases where one of the parties in process has been one of the judge's university fellows.<sup>357</sup> Albania is small and, an international observer noted, 'everybody knows each other. I have seen that occasionally judges and prosecutor will meet normally before and after the process and it was obvious that they were friends.'<sup>358</sup> Following 2000, all prosecutors and judges now graduate from the same school, the School of Magistrates (SOM).<sup>359</sup>

I confirmed this pattern personally. In several of my court observations, especially in rural courts, I noted that judges communicated with prosecutors in a very friendly way, giving the perception that they were close friends. Prosecutors entered the court using the same entrance as judges. It should be mentioned, though, that in small cities the community of lawyers is very small and it is normal to expect them to have established professional friendships.<sup>360</sup>

Several judges admitted that undue influence exerted by friendship ties is sometimes more significant than other institutional pressures. According to a chief judge of a first instance rural court, 'you would occasionally hear judges whispering over the dilemma of finding a suitable solution for their friend but one that is also within the limits of the law'.<sup>361</sup> Local friendship can equally influence impartiality. This attitude comes from the idea of loyalty to friends. One international observer noted that 'if somebody comes to a judge and has a

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<sup>356</sup> Around 96% of judges surveyed by IDRA in 2010 were graduated from the University of Tirana Faculty of Law. See IDRA (2010) 'Corruption in Albania Perception and Experience: Judges Survey 2010'.

<sup>357</sup> Interview with rural judge no.7, 2010.

<sup>358</sup> Interview with international observer no.3, 2010.

<sup>359</sup> Interview with urban prosecutor no.5, 2010.

<sup>360</sup> Interview with rural judge no.5, 2010.

<sup>361</sup> 'In my opinion the worst corruption is the other form of corruption, non-monetary corruption, obligation to do a favour, the social obligation, a form of pressure, something that existed even before (during communism), so if I do you this favour you should do me that...this is a bit culturally engrained here. Albanians consider their neighbours as part of their family. So you have to be very strong to resist friendship influences with dignity and obey the law when deciding a court case... It is very difficult... you occasionally hear judges whispering about the dilemma of finding a suitable solution for their friend but one that is also "within the limits of the law"... it is something else though to do a favour "within the limits of the law". For example, if the law says that someone can receive a sentence of 5 to 10 years and you sentence him to 5 years this is within the boundaries of the law. But if he has to be sentenced to 5 or 10 years and you say that he is innocent then this is inexcusable...'Interview with urban judge no.3, 2010.

close friendship with him, the judge will find it hard to say no to the person even if it is right to do so. Friendship ties certainly are very problematic.’<sup>362</sup>

Close connection with society or moral norms also has caused judges to be partial. This is more evident in rural courts with local judges, especially with those who have worked for many years in the same district. For instance, in the early period of transition, 1992-97, there were occasions in cases involving a blood feud, when family members of the victim would gather outside the court and ask the judges to free the accused as they wanted to exact revenge according to the ‘Kanun’. This traditional Albanian code would allow the victim’s family to restore justice with ‘its own hand’ and maintain its honour in public. In this situation, if judges do not respect that commitment they will be seen as obstructers of customary norms and feel under social pressure.<sup>363</sup>

There have been rare occasions where judges or prosecutors have even ‘been blackmailed under the Kanun’,<sup>364</sup> but a few of my interviewed judges noted that the situation is improving. In these situations, one might ask: What should judges do to maintain the confidence of the public which the BPJC promote? And this could be followed with another question: What are the standards that a judge should take into account when assessing the public confidence – customary or institutional? This puts judges in a very uncomfortable position, because whichever side they take they can be seen as biased either by the public or law. In addition, judges will be reluctant to ‘take any bribe on cases of blood feud as family members of the victim may then chase the judge and his family under the blood feud regime’.<sup>365</sup> However, the majority of my interviewee judges noted that this is not such an issue (i.e. blackmailing judges under blood feud) in the Albanian courts in the North as it used to be. There are only sporadic cases when similar situations can happen and hence ‘it is hard even to call it a phenomenon there’.<sup>366</sup>

In addition, judges in rural courts find it difficult to socialise because this can be misunderstood by society and impact negatively on judges’ reputation there.<sup>367</sup> In rural courts, there is a different perception of judges who come from a different region – non-local judges. Albania is a small country and many judges live in a different city from where they work. Advocates think that local judges are more honest because of social pressure

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<sup>362</sup> Interview with international observer no.1, 2010.

<sup>363</sup> Interview with urban judge no.11, 2010.

<sup>364</sup> Interview with rural prosecutor no.3, 2010.

<sup>365</sup> ‘...in the cases of blood feud, there is no way that a judge would go down that path, as he or she would endanger himself and his family because of the Kanun ...so judges will not take any bribes in cases of blood feud as family members of the victim might then chase the judge and his family under the blood feud regime....this is an issue related to Kanun, and if the other party saw the judge sitting with their adversary they would not like it.. A judge should be aware of protecting himself and stay away from the parties, from both social and financial influences...judges should behave very carefully in public especially in small towns, because here society finds it difficult to stomach. Here people know everybody, they know all your family and even your tribe...particularly in the city of Shkodra (North) where blood feuds are a big concern...’ Interview with rural judge no.6, 2010.

<sup>366</sup> Interview with rural advocate no.2, 2010.

<sup>367</sup> Interview with rural judge no.3, 2010.

from the locals. Judges coming from a respectable family ('Dere e Madhe') in the area, in particular, are less likely to be corrupt because this will give their family a bad name in that area.<sup>368</sup>

The contrary happens with rural non-local judges, who mix and socialise very quickly with people. The lack of 'both a reputable family origin and knowledge of customary norms is a disadvantage for non-local judges, and sometimes this leads them to engage with criminals or people with a bad public reputation'.<sup>369</sup> As one rural advocate put it, 'when they come here in the first two weeks you see them sitting with all sorts of people, which local judges do not'.<sup>370</sup> Judges in this category are perceived by the community of lawyers as more easily corrupted.<sup>371</sup>

In contrast, in urban courts the role of family is more limited but the role of friendship ties and private connections is very strong.<sup>372</sup> Friendship ties are used either as a form of access to judges or as an exchange of favours among friends if the judge and advocate knew each other before.<sup>373</sup> Several interviewed judges admitted that they do favours within the 'limits of the law'. I explain this pattern below, in the 'Propriety' section.

However, other interviewees saw the mobility of judges or prosecutors (non-local judges/prosecutors) as something positive in terms of social pressure. Non-local judges are more protected from family ties and the social influence of the area.<sup>374</sup> Several interviewed judges highlighted that, especially in rural courts, judges who 'work for more than 15 years in one area become familiar with the people there and this can lead to social influence or obstruction of the judges' independence because of the friendship networks'.<sup>375</sup>

My interviews suggest that the influence of family ties in rural courts is decreasing. Patterns of social influence here 'are gradually mirroring the patterns of urban courts in terms of friendship ties and exchange of favours'.<sup>376</sup> In addition it seems that a violent

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<sup>368</sup> Interview with rural advocate no.2, 2010.

<sup>369</sup> Interview with rural advocate no.1, 2010.

<sup>370</sup> '...Non-local judges, when they come here (city of Shkodra in the North), in the first two weeks you see them sitting with all sorts of people, which local judges do not...judges from Shkodra know the views of the people here and want to act correctly. You do not see them in coffee shops.... non-locals do not even have a house here where they can stay, so you only find them in clubs....'Interview with rural advocate no.2, 2010.

<sup>371</sup> Interview with rural judge no.2, 2010.

<sup>372</sup> Interview with urban judge no.3, 2010.

<sup>373</sup> Interview with urban advocate no.7, 2010.

<sup>374</sup> Interview with rural prosecutor no.2, 2010.

<sup>375</sup> Interview with rural judge no.6, 2010.

<sup>376</sup> 'People are departing from the customary norms because society is becoming more urbanised, everything is changing, and everything is market-oriented...there are no values like there used to be...Before, we had the family, honour, friendship; now... we are gradually mirroring the patterns of urban courts in terms of friendship ties and exchange of favours...it's going in the direction of the money...'Interview with rural judge no.1, 2010.



custom such as blood feud and another non-violent custom ‘good name of family’ play a positive role in inhibiting judges from corruption. In contrast, friendship ties seem to play a negative role in judicial corruption. This is evidenced even in the *ex parte* communication, to which I now turn.

### ***Ex Parte* Communication**

*Ex parte* communication between judges and parties remains a concern in Albania. In rural courts, judges will meet openly and sometimes on the premises of their client.<sup>377</sup> One advocate I interviewed took me to one of the most expensive hotels in the vicinity of a rural court and pointed out that its owner is a powerful individual who has won several cases in the court.<sup>378</sup> Some judges in that city used to have frequent informal meetings there.

The contacts in rural courts are more personal. By contrast, as mentioned above, in urban courts such contacts tend to be more sophisticated and judges might ‘meet on the outskirts of the city or in particular restaurants’.<sup>379</sup> In urban courts, parties usually use their advocates to contact judges.<sup>380</sup> My interviews suggest that in rural courts in the North, judges are very cautious about socialising openly with litigants in cases dealing with blood feud, because ‘family members of the victim will immediately perceive these meetings as a breach of customary norms’.<sup>381</sup> This could endanger the life of a judge because family members of the victim may call for a vendetta according to the Kanun.

It should be mentioned that there are legal improvements which encourage judges to recuse on their own initiative in cases of conflict of interest. Since 2000 there has been a Code of Judicial Ethics in Albania which covers almost all aspects of conflicts of interest (ABA/CEELI 2001:22). The Ethics Commission set up by the National Judicial Conference (NJC) has been in operation since 2002 and provides advice to both judges and the High Council of Justice (HCJ) on ethical issues and judges’ conduct (ABA/CEELI 2008:46). Training in ethics is provided for judges as part of their continuing legal education. In addition, the HCJ’s inspectors are instructed to also assess a judge’s case on the grounds of conflict of interest. If they find out that there are reasons to believe that judges were in conflict of interest and did not recuse, ‘the inspectors will immediately initiate a disciplinary proceeding and propose it to the HCJ’.<sup>382</sup>

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<sup>377</sup> Interview with urban advocate no.7, 2011.

<sup>378</sup> Interview with rural advocate no.1, 2010.

<sup>379</sup> Interview with investigative journalist no.1, 2010.

<sup>380</sup> Interview with urban advocate no.6, 2010.

<sup>381</sup> Interview with rural judge no.6, 2010.

<sup>382</sup> Interview with HCJ inspector no.1, 2010.

However, enforcement of this Code remains a concern (ABA/CEELI 2008:47). My interviews show that judges were not very familiar with the Code and a few of them did not yet consider it an effective tool to eradicate judicial corruption.<sup>383</sup>

## Other Factors

Judges can be partial by abusing their active role in the process. Judges in these situations will prioritise one party using their discretion. Several of my interviewed prosecutors reported that, when looking at judges' behaviour in the courtroom, they can easily identify when judges are assisting a party or not. For instance the way they question/persuade the witness or the way they react to the advocate or prosecutor.<sup>384</sup> In addition, another explicit indicator is when the court 'refuses to let other parties ask questions in a particular direction which looked like a direction that would be very favourable to the other party'.<sup>385</sup>

Economic or political status of the parties is also a significant factor for judges to be biased in a court process. It is very difficult for a 'normal' individual to win a case against powerful individuals or businesses. This is true of both urban and rural courts.<sup>386</sup> The social status of the parties, however, is not always the main cause for bias. In criminal cases particularly, judges often give priority to prosecutors. As one international observer put it, 'On more than one occasion I've seen unprepared prosecutors treated with considerable patience by the judges.'<sup>387</sup> According to an OSCE report on Albanian criminal justice, 'Courts also seem to have a tendency to listen more to the prosecution than to the defence, thus creating a disadvantaged position for defence counsel and creating imbalances in the principle of equality of arms.'<sup>388</sup>

However, impartiality is often harmed unintentionally. In the Albanian judicial system the role of the judge in the process is active,<sup>389</sup> so he is allowed to raise questions to all parties

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<sup>383</sup> According to IDRA (2010), 22% of surveyed judges required a better training on ethical behaviour. IDRA (2010) 'Corruption in Albania Perception and Experience: Judges Survey 2010'.

<sup>384</sup> Interview with urban prosecutor no.1, 2010.

<sup>385</sup> Interview with international observer no.2, 2010.

<sup>386</sup> Interview with rural advocate no.1, 2010.

<sup>387</sup> Interview with international observer no.3, 2010.

<sup>388</sup> Organisation for Security and Co-operation in Europe (OSCE) (2006) 'Analysis of the Criminal Justice System of Albania: Report by the Fair Trial Development Project', p.93.

<sup>389</sup> This active role of judges in the court process is a pattern of the accusatorial legal system in civil law countries in Europe such as Spain and Italy. There are two main features of the accusatorial process: first, the separation of the prosecutor's functions from the courts, and second, the separation between pre-trial and trial proceedings. According to Amodio (2004:490), 'The clear-cut separation between the body responsible for investigating and prosecuting a crime and the body responsible for adjudicating the case was introduced with a view to securing the trial judge's impartiality and suggested that the judge's own initiative in collecting evidence not offered by the parties should be made an exception even at trial.'

in the process and interfere when he thinks it appropriate. The role of judge is more than that of sole arbiter; he or she plays an active role and on many occasions judges cross the line without any malicious intent.<sup>390</sup> In addition, the active role of judges in the process is often misunderstood and this has led judges to act as prosecutors in the process. As one urban prosecutor put it, 'sometimes you see judges take the role of the prosecutors without even understanding it'.<sup>391</sup>

## Integrity

Judges should possess integrity in the discharge of their duty. Integrity includes personal and institutional behaviour. According to the BPJC, the main ingredients of integrity are 'honesty and judicial morality' (Commentary 2007:79). Although there is no definition of integrity, the guidance provided by the BPJC is that the test should be left to the community's standards (ibid:79). Overall the behaviour of a judge should be on the highest level in both private and public life (ibid:80). In addition, it is essential that the behaviour or conduct of the judge assures the community of the integrity of the judiciary – justice must be seen to be done (ibid:83).

Integrity entails good behaviour, a professional conduct in the court and 'scrupulous respect for the law' (ibid:82). The situation becomes obscured when the BPJC imply that the integrity of judges should be above that of a reasonable observer (ibid:80). The perception of an observer is contextualised with the community standards of ethics, especially in rural courts, and he/she will test the judge's acts accordingly. Moreover, there may be a disparity between different communities' standards for certain conducts and this may influence the perception of a non-local judge by a local observer. Take, for example, the case of a judge originating from the South but working in the North. His behaviour may be in accordance with the customary norms in the South, but this may not be perceived as proper by a 'reasonable observer' in the North.

As mentioned above, there are two types of judge who work in Albanian courts: local and non-local. I have shown that the community of advocates in rural courts such as Shkoder (North) saw the behaviour of non-local judges, such as their being quick to socialise with certain individuals, as not correct. It was not about integrity but about the lack of knowledge of customs.<sup>392</sup>

In addition, the test of integrity suggested by the BPJC is ambiguous. On the one hand it recommends that the community criteria be taken as a standard for applications by judges, and on the other it highlights that religious or ethical beliefs, whether accepted or not by the community, should not be taken into account when judging an act as immoral, but

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<sup>390</sup> Interview with urban prosecutor no.2, 2010.

<sup>391</sup> Interview with urban prosecutor no.2, 2010.

<sup>392</sup> Interview with rural advocate no.2, 2010.

rather it recommends an assessment of 'how the act reflects upon the urban components of the judge's ability to do the job' (Commentary 2007:81). It seems that the BPJC attempt to differentiate between the community's perception and the influence of its ethical and religious standards on the judges' behaviour and conduct. And this may often be confusing.

To illustrate, one of my interviewees, a judge with extensive experience in rural courts in the North, felt content with the fact that he did not approve a request for divorce made by a woman on the grounds of the use of violence by her husband. The judge said, 'I did not approve the divorce because the husband was just biting his wife<sup>393</sup> – you cannot allow a divorce simply for this reason here.'<sup>394</sup> He implied that in his locality, a different decision could have been perceived by society as unreasonable, too lenient, or as partial.

Therefore the definition of 'reasonable observer' provided by the BPJC throughout the Commentary needs to be taken with caution because, in the hinterland, criteria such as 'informed person' or 'capability of the person to decide fairly' can have a negative influence on the decisions of judges, as illustrated above. Particularly in post-communist societies, where law is 'treated as a tedious formality', the situation becomes more complicated (Kurkchian 2003:36).

In addition, an 'informed person' in a rural area may be defined as someone who knows customary norms but not the modern principles of law. Therefore his perception of a judge's behaviour will be based primarily on these presumptions and not on formal legal procedures. So a judge who, in his mind, applies law and analyses facts of a case according to the rule of law principles, may be perceived by the rural 'reasonable observer' as not acting sufficiently to sustain justice in the community and this can push judges to apply customary norms in a formal court. The interviewed judge, mentioned above, argued that in several cases he grounded his decisions on the contextual understanding of the local community of justice.<sup>395</sup> He thus gave consideration to the customary norms within the limits of the formal law.<sup>396</sup> His experience included knowledge of customary norms applicable in the North (Kanun), civil law and even knowledge of laws in the communist period.

Having identified the difficulty of a comprehensive application of the BPJC notions in the Albanian context, I now turn to integrity and the factors that undermine it.

Integrity is conceptualised by the BPJC in very broad terms. Accordingly, 'Integrity is the attribute of rectitude and righteousness. The components of integrity are honesty and judicial morality.... there are no degrees of integrity as so defined.... integrity is more than a

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<sup>393</sup> When the judge was asked why he arrived at this conclusion he said that he did not believe what the woman was saying. She failed to provide strong evidence showing that she was bitten regularly. Her husband was very old and most probably there were other reasons why she wanted the divorce. The judge thought that the woman was looking for an excuse.

<sup>394</sup> Interview with rural judge no.5, 2010.

<sup>395</sup> Interview with rural judge no.5, 2010.

<sup>396</sup> It should be mentioned that the Albanian legal system recognises customary norms as the source of law. In the absence of law, judges may take reference to 'acceptable customs' (zakonet e mira) to solve disputes. (Civil Code arts.159 and 608.)

virtue; it is a necessity' (Commentary 2007:59). Integrity is also 'a relative term, as certain judges apply different standards of integrity to different categories of case and subject'.<sup>397</sup> In order to provide a general picture of the issues of judges' integrity I will try to give some nuances which should not be taken as mere facts or as a basis for stigma. But rather they should be seen as indicators of which categories of judge or level of court that integrity is more problematic.

My interviews suggest that lack of integrity is a serious concern in the Albanian judiciary. The majority of interviewees pointed out that this lack of integrity<sup>398</sup> is one of the main factors why trust in the courts is poor. This has also been evidenced by local<sup>399</sup> and regional surveys<sup>400</sup> on Albanian judicial corruption in recent years. Even compared to other countries in the Western Balkans, Albanians were among those nationalities who perceive the judiciary as the least trustworthy institution.<sup>401</sup>

In 2001, a respondent in the ABA/CEELI report defined a judge with integrity or a 'good judge', as someone 'who never asks for bribes, but who might accept money or a gift if offered. A "bad" judge is one who approaches litigants to ask them for bribes or who is extravagant in the amount of money gained through corrupt practices' (ABA/CEELI 2001:21). In 2011, my findings suggest that this statement is still valid. When I asked an urban judge whether a fair judge constitutes one who does not ask for money before the trial nor one who accepts cash as a gift after the decision has been given – the answer was that 'In the community of lawyers, this type of judge is known as a crazy judge.'<sup>402</sup> To another respondent, 'crazy' judges are 'endangered species'.<sup>403</sup> This finding implies that

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<sup>397</sup> Interview with international observer no.1, 2010.

<sup>398</sup> IDRA (2010) shows that 72% of surveyed judges scored fairness as the second worst aspects of the courts. IDRA (2010) 'Corruption in Albania, Perception and Experience: Judges Survey 2010'.

<sup>399</sup> According to IDRA (2010), the percentage of respondents who trust the judiciary 'A little' or 'Not at all' remains high, at 64.1%. IDRA (2010) 'Corruption in Albania: Perception and Experience, Survey 2010, Summary of findings', p.13.

<sup>400</sup> Balkan Monitor points out that 'The judicial system was the only body where the people's level of confidence had dropped by 13 percentage points between 2009 and 2010.' See Gallup Balkan Monitor: Insights and Perceptions, Voices of the Balkans '2010 Summary of Findings', Gallup Balkan Monitor in Partnership with the European Fund for the Balkans, p.28; available at [http://www.balkan-monitor.eu/files/BalkanMonitor-2010\\_Summary\\_of\\_Findings.pdf](http://www.balkan-monitor.eu/files/BalkanMonitor-2010_Summary_of_Findings.pdf) [accessed September 21, 2011].

<sup>401</sup> Kosovo Albanians, Macedonia Macedonians and Montenegro. For more see Gallup Balkan Monitor: Insights and Perceptions, Voices of the Balkans '2010 Summary of Findings', Gallup Balkan Monitor in Partnership with the European Fund for the Balkans, pp.29-31; available at [http://www.balkan-monitor.eu/files/BalkanMonitor-2010\\_Summary\\_of\\_Findings.pdf](http://www.balkan-monitor.eu/files/BalkanMonitor-2010_Summary_of_Findings.pdf) [accessed September 21, 2011].

<sup>402</sup> '...the worst type of judge is one who asks you for money before the case starts, a good judge is one who does not ask you for money beforehand but accepts something after the decision is given....an honest judge is one who neither asks for money beforehand nor accepts it afterwards... In the community of lawyers, this type of judge is known as a crazy judge...' Interview with urban advocate no.7, 2011.

<sup>403</sup> Interview with urban prosecutor no.4, 2010.

judicial corruption is widespread in all court levels and the number of corrupt judges is high. It also suggests that judicial corruption seems deeply entrenched in the institutional behaviour of judges and so has become institutionalised.

While the BPJC are not clear on the role of professionalism<sup>404</sup> in judges' integrity (Commentary 2007:82) my findings suggest that judges who lack professionalism are more likely to be prone to corruption.<sup>405</sup> One argument is that they make more mistakes in their work and can easily be subject to blackmail either by their superiors, litigants or organised crime.<sup>406</sup> Unfortunately, more professional judges are found in first instance courts than in appeal courts or the High Court.<sup>407</sup> Judges originating from the hinterland are easy targets for people of influence such as businessmen and politicians. They are perceived by the community of lawyers as judges with less integrity than others.<sup>408</sup> In rural courts, as mentioned above, non-local judges socialise more openly with parties and this is perceived by the community as lack of integrity. Such socialising is sometimes unavoidable, particularly if non-local judges travel using public transport as they often meet the parties there.<sup>409</sup>

My interviews suggest that the dynamic of judges' integrity has changed. Before 2005, the public perception was that judges with less integrity tended to be in the first instance of urban courts such as in Durrës or Tirana.<sup>410</sup> But in 2011 this perception seems to have changed. The public now think that judges of appeal courts, and especially of the High Court, suffer more from lack of integrity than the lower level court judges.<sup>411</sup> The majority

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<sup>404</sup> In the community of lawyers in Albania professionalism refers more to competence and education. Interview with urban judge no.5. In other jurisdictions the term is broader. For instance the community of judges in Maryland defined judicial professionalism as a 'combination of the core values of personal integrity, competency, civility, independence, and public service that distinguish lawyers as the caretakers of the rule of law'. See the Maryland Commission on Professionalism, May 30, 2007; available at <http://www.courts.state.md.us/professionalism/pdfs/finalreportrevised.pdf> [accessed May 23, 2012].

<sup>405</sup> Interview with urban judge no.1, 2010.

<sup>406</sup> Interview with investigative journalist no.2, 2010.

<sup>407</sup> Interview with urban judge no.5, 2010.

<sup>408</sup> Interview with rural advocate no.2, 2010.

<sup>409</sup> Interview with rural judge no.7, 2010.

<sup>410</sup> Interview with urban advocate no.2, 2010.

<sup>411</sup> '... we lack a High Court with integrity which can unify the judicial practice, the so called "unified decisions". If this country is not able to find 15 judges who put the interests of the law first and appoint them in the High Court what should the public's expectation be? The High Court is a judicial mechanism which corrects the judicial system. Because through its decisions the High Court guides lower courts... according to our law "unified decisions" are binding for all courts (a kind of precedent)..in addition, with a "unified decision" the High Court can put some order into the judicial system. And if the court system can be regulated in this way, it is very difficult for a judge in a lower court, to circumvent a "unified decision", because in this case he will be easily identifiable and there will be disciplinary proceedings for violating the law. I say that a High Court with integrity is very important. It is a very good self-correcting mechanism which we are lacking...' Interview with urban prosecutor no.3,2010.

of my interviewees highlighted that among judges, prosecutors and advocates, the latter were considered to be the worst in terms of integrity. In addition, the interviews suggest that corruption is more widespread in civil and administrative cases which deal with property rights where the level of bribes is higher.<sup>412</sup> Less corruption is perceived in cases dealing with family issues.<sup>413</sup>

Poor recruitment and politicisation of promotions remain concerns in terms of integrity. The contingents of judges recruited from the community of advocates are perceived as having more problems with integrity than others.<sup>414</sup> The 'six-months judges' are comparably viewed by my interviewees as having less integrity, followed by (in rising order of integrity) 'post-communist judges', 'judges of transition', and 'Magistrates'. In general, 'Magistrates' are perceived to behave more professionally in the courtroom and in public.

But my interviewees suggest that the trend is negative.<sup>415</sup> As one judge said, 'it is very hard to say what category of judges has more integrity but it can be said that "Magistrates" are better in terms of ethics and professionalism. Unfortunately it is evident that even from the category of "Magistrates" there are individuals who have spoiled the role of judge in society, something that makes it very difficult for us to introduce ourselves in the public as judges.'<sup>416</sup> Among all categories of judges, in general to the public eye, the behaviour of 'Magistrates' is perceived to be better than that of 'non-Magistrates' because of their young age and short period in the system. So they appear to the public as less contaminated by judicial corruption.<sup>417</sup>

## Propriety

It is essential that justice not only be made but also be demonstrated (Commentary 2007:85). Demonstration of justice requires that the appearance of judges' conduct be at a high standard in the public view (ibid:85). The test of propriety according to the BPJC, rests on the ability of the judge to not only perform his judicial duties duly but also to form in the mind of the reasonable observer that his conducts are proper (ibid:85). The BPJC highlight that judges should be aware of certain restrictions on their public life (ibid:87). While recognising that gathering with members of the legal professional can be beneficial, the Principles state that extensive socialisation with advocates and litigants harms impartiality (ibid:87).

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<sup>412</sup> Interview with urban judge no.2, 2010.

<sup>413</sup> Interview with rural judge no.8, 2010.

<sup>414</sup> Interview with rural judge no.7, 2010.

<sup>415</sup> Interview with rural advocate no.1, 2010.

<sup>416</sup> Interview with rural judge no.4, 2010.

<sup>417</sup> Interview with rural judge no.1, 2010.

The BPJC consider the application of the rule of the conflict of interest as playing a significant part in the appearance of a judge's activity before the public (ibid:92). The Principles suggest that, to maintain a proper appearance, judges should resist undue influence from colleagues, family members, friends and court staff (ibid:99). Judges should also be aware of the financial interests of their family members (ibid:98). In addition, a judge, his family members and also his staff should not 'ask for, or accept, any gift, bequest, loan or favour' that is related to his function (ibid:117). Propriety is also linked with protection of confidential information and private data of the litigated parties (ibid:104).

The BPJC highlight that extrajudicial activities (e.g. academic activities) should not harm the impartiality of judges and appearance of judicial activity (ibid:111). It is also not considered improper if judges associate and speak out in public while being cautious in preserving 'the dignity of the judicial office' (ibid:95). The above elements are also covered by the Albanian Code of Judicial Ethics.<sup>418</sup>

The BPJC, as mentioned above, address 'propriety' and elaborate only on the personal aspects of the judges' behaviour and speak little about institutional factors which have a significant impact on the appearance of the judiciary to the public. For instance, issues of infrastructure, delays in decisions and solemnity of the process are not tackled. There is only one aspect where the BPJC seem to introduce an institutional element connected to 'propriety' – the suggestion that judges should avoid the misuse of judicial prestige for private benefits where it includes, among other things, even the use of judicial stationery (Commentary 2007:100). Focusing only on the individual aspects of 'propriety' will not be helpful in providing a clear dynamic of the issues of judicial appearance in Albania. Therefore, I will be looking even at the institutional appearance of judicial conduct.

The majority of interviewed advocates suggested that there are two main factors influencing the public's perception of the propriety of judges in Albania.

First, the institutional behaviour of judges in managing the court process, which is mostly associated with transparency, managing files, wearing a judge's uniform (i.e. a special robe), and patterns of communication with parties and court staff. All these essentials constitute the solemnity of the judicial process. According to the HCJ decision no.238, dated December 24, 2008, the elements of the solemnity of the judicial process are: that the process be heard in the courtroom, judges wear their uniform, dates and time of the process be followed rigorously, ethics be respected during the process, and court decisions be issued without delay and according to the law.<sup>419</sup>

Second, the individual behaviour of judges outside the courtroom is another important aspect of propriety.<sup>420</sup> This is related to *ex parte* meetings or inappropriate contacts of judges with litigants, socialisation with individual lawyers, or suspicious individuals; gift-taking or 'baksheesh'; and expensive lifestyles off the bench.<sup>421</sup>

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<sup>418</sup> See Rules 3, 4, 10, 15, 19, 22 and 23.

<sup>419</sup> See the Monitoring Report of Albanian Helsinki Committee on the Due Process during 2010, p.13; available at [http://www.ahc.org.al/doc/Raport\\_rregullshmeria.pdf](http://www.ahc.org.al/doc/Raport_rregullshmeria.pdf) [accessed August 12, 2011].

<sup>420</sup> Interview with rural judge no.8, 2010.

<sup>421</sup> Interview with urban prosecutor no.5, 2010.



My findings are in line with the Institute for Development Research and Alternatives (IDRA) survey of 2010 which shows that the opinion of both the general public and public employees on the transparency of courts was very low and that courts were perceived as the second least transparent institutions in Albania.<sup>422</sup> In both IDRA surveys of 2005 and 2006, courts and the General Prosecutor's Office were perceived as the least transparent institutions.<sup>423</sup> It should be noted that courts, however, are amongst those institutions that have made some progress in the period 2005-10.<sup>424</sup>

The approach of Albanian judges on the test of propriety was very similar to the BPJC framework. According to one interviewed judge, 'If the decision of the court is not in accordance with the moral standard of parties in process or the public opinion in broad, then justice is not shown and the decision is unjust.'<sup>425</sup>

## **Institutional Behaviour**

**Infrastructure:** Although I elaborated on the role of infrastructure in Chapter 4 as a factor to judicial corruption I turn to this issue again and look at it from a different angle. So here in this section I indicate how poor infrastructure influences the behaviour of judges and the public's perception of prestige of the judicial office. Almost all the judges I interviewed underlined that 'lack of solemnity in the process is one of the main factors that harms judges' reputation in the public sphere'.<sup>426</sup> Lack of courtrooms means that in many courts, cases must be tried in the judges' offices.<sup>427</sup> This opens opportunities for improper contact with litigants, advocates or prosecutors during the process.<sup>428</sup>

Lack of space even in the judges' offices brings chaos to the court's process because there are no sitting places for parties, public observers or advocates.<sup>429</sup> Courts with an improved infrastructure do not have problems with solemnity but there are other courts still, such as

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<sup>422</sup> IDRA (2010) 'Corruption in Albania: Perception and Experience, Survey 2010, Summary of findings', p.15.

<sup>423</sup> IDRA (2006) 'Corruption in Albania: Perception and Experience, Survey 2006, Summary of findings', p.13.

<sup>424</sup> IDRA (2010) 'Corruption in Albania: Perception and Experience, Survey 2010, Summary of findings', p.15.

<sup>425</sup> Interview with the urban judge no.2, 2010.

<sup>426</sup> Interview with urban judge no.9, 2010.

<sup>427</sup> In 2006, for 30 first instance courts there were only '81 courtrooms for 286 judges, while the eight appellate-level courts share[d] 19 courtrooms for 65 judges' (i.e. an average of less than three courtrooms per court) (ABA/CEELI 2006:32).

<sup>428</sup> Interview with urban judge no.7, 2010.

<sup>429</sup> Interview with rural judge no.1, 2010.

the court of Elbasan for instance, where 18 judges share only two courtrooms.<sup>430</sup> Since 2001 there has been a steady improvement in infrastructure, especially in the courts of serious crime in Tirana and several rural appeal courts.<sup>431</sup>

**Solemnity:** Lack of solemnity not only influences the public's perceptions but can also have legal consequences. According to article 25 of the Law on Judicial Power, the solemnity of the court's process should be guaranteed, and according to one interviewed judge, 'the majority of the courts' decisions today risk being challenged in the Constitutional Court on the grounds of the breach of solemnity which is part of the due process'.<sup>432</sup>

The judges I interviewed shared different views on whether cases should be heard in their offices. Whereas judges working in the civil division were against, those working in the criminal division were not quite so unanimous. One interviewed judge, working with criminal cases, said that 'sometimes it is better to hear cases in the office, as the design of the courtrooms where criminal cases are tried has a negative psychological effect on people with certain characteristics, such as elders or youngsters'. According to him, 'certain categories of case, such as small fraud, are better to be tried in the judge's office'.<sup>433</sup>

In contrast, several interviewed advocates claimed that the lack of courtrooms is not the main concern regarding judges' propriety; rather, there are other aspects which should be taken into consideration, such as the life of judges outside the courtroom. According to interviewed advocates, these are the more influential factors in the public's perception.<sup>434</sup> Almost all the interviewees admitted that there are many judges whose expensive lifestyle is not justifiable, and the majority of interviewed advocates as well as some prosecutors admitted that this number is increasing and becoming a problem even among the new judges, or 'Magistrates'.

A few interviewees noted that another concern for judges' propriety is around the wearing of a robe. In Albania all judges, advocates and prosecutors are required to wear a special robe.<sup>435</sup> As recently as 2010, local reports such as that of the Helsinki Committee note that many judges still do not respect the wearing of uniform while in the court process.<sup>436</sup> However, my observations and interviews with advocates and judges evidenced that the situation is improving and probably this aspect was one of the most progressive indicators of judges' propriety.<sup>437</sup>

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<sup>430</sup> Interview with HCJ inspector no.2, 2010.

<sup>431</sup> Interview with urban judge no.2, 2010.

<sup>432</sup> Interview with rural judge no.7 2010.

<sup>433</sup> Interview with urban judge no.1, 2010.

<sup>434</sup> Interview with urban advocate no.2 and no.4, 2010.

<sup>435</sup> See Law no.9978, dated February 18, 2008, 'On Organisation of Judicial Power in the Republic of Albania', art.25.

<sup>436</sup> See the Monitoring Report of Albanian Helsinki Committee on the Due Process during 2010, p.8; available at [http://www.ahc.org.al/doc/Raport\\_rregullshmeria.pdf](http://www.ahc.org.al/doc/Raport_rregullshmeria.pdf) [accessed August 12, 2011].

<sup>437</sup> Interview with urban advocate no.1 and urban judge no.3, 2010.

**Transparency:** Several interviewed advocates pointed out that mismanagement of the process is another aspect that makes Albanian judges appear non-professional to the public (Miklau 2009). Operational issues such as file storing, writing of minutes of the process, and accuracy in the meeting are of great concern.<sup>438</sup> Files are kept in judges' offices until the case is finished and there have been occasions where proofs have been damaged or minutes of the process had pages lost. This may also be related with the lack of professionalism of the courts' administrative staff.<sup>439</sup> Since 2004 the situation has been improving and it seems that files are better organised and kept in safer places.<sup>440</sup>

Interviewed advocates claimed that another operational problem influencing 'propriety' is the lack of special typing machines (like a stenograph) that help secretaries to transcribe the minutes of the court processes.<sup>441</sup> They are not even recorded or transcribed to give the parties an opportunity to check them later in the process.<sup>442</sup> This influences the credibility of the process.<sup>443</sup> Both judge and litigants rely on the notes taken by secretary via computers or hand.<sup>444</sup> Sometimes minutes are hard to read and include only the main elements of the process.<sup>445</sup>

However, a rural chief judge said that all minutes of the process are taken by a secretary on a computer and when the process finishes parties are each provided with a copy.<sup>446</sup> In my observations I realised that both claims stand and there is no uniform standard applied in this context. In the first instance court of Tirana, for example, there were judges who did not allow their secretaries to keep minutes on a computer but only in handwriting, arguing that this method protected the documents from tampering.<sup>447</sup>

What I observed in most of the cases tried by one judge, the secretary waited for the judge's instruction on how to formulate the sentences and then wrote it. Several interviewed judges argued that this was done to include only the main facts of the case and in this way the process was made more time efficient.<sup>448</sup> That said, the situation is

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<sup>438</sup> Interview with urban advocate no.2, 2010.

<sup>439</sup> Around 72% of surveyed judges by IDRA in 2010 ranked the administrative staff's competence the last component of the judiciary out of five. See IDRA (2010) 'Corruption in Albania, Perception and Experience: Judges Survey 2010'.

<sup>440</sup> Interview with HCJ inspector no.1, 2010.

<sup>441</sup> This finding also corresponds with that of IDRA. See IDRA (2010) 'Corruption in Albania Perception and Experience: Judges Survey 2010'.

<sup>442</sup> Interview with urban advocate no.1, 2010.

<sup>443</sup> Interview with rural advocate no.1, 2010.

<sup>444</sup> Interview with urban judge no.7, 2010.

<sup>445</sup> Interview with urban advocate no.2, 2010.

<sup>446</sup> Interview with rural judge no.3, 2010.

<sup>447</sup> See also USAID Albania (2011) 'Albanian Courts Need Assessment in Support of Audio Recording: Assessment report of courtroom equipment and court IT infrastructure, court security, status of computerized trial records, and court public relations', USAID Albania, Tirana.

<sup>448</sup> Interview with urban judge no.1, 2010.

changing, especially in rural courts. In many courts, there are screens in the courtrooms where everything recorded by the secretary during the hearings is made visible to the public in real time. Litigants have the opportunity to agree or disagree if something is not correct and ask for the minute of the process to be amended accordingly.<sup>449</sup>

Another aspect of 'impropriety' noted by interviewed advocates was the publication of the court decisions online. My research shows that only a few courts have websites where they publish their decisions but most of them do not work well. Only the Constitutional Court and the High Court have better accessible websites but they are not updated regularly.<sup>450</sup> Lack of online resources impairs transparency and influences the public's perception of the efficiency of the justice system.

An additional 'improper' conduct noted by interviewees was the inconsistency in how judges respect the trial procedures, such as allowing parties sufficient time for collection of proofs between court sessions, and ambiguous procedures for late notifications.<sup>451</sup> My interviews suggest that poor service in the courts is also influencing public perception.<sup>452</sup> According to IDRA 2010, the service is deteriorating. Between 2009 and 2010, there was an 11.3% increase in the number of respondents saying they were treated 'Poorly' or 'Very poorly'.<sup>453</sup>

Postponement of trial for ambiguous reasons was also a negative demonstration of justice in the public evidenced by interviewed judges and prosecutors. As mentioned earlier, in urban courts such as the courts of Tirana and Durrës, the backlog is a great concern. In Tirana, a case to be completed may take around eight months in the first instance, around twelve months in the Court of Appeal and a minimum of 18 months in the High Court – in total it takes around three years and three months to complete.<sup>454</sup> The situation is better in rural courts; for instance in the courts of Gjirokastra or Korca a case takes one or two months maximum.<sup>455</sup> There was a positive move undertaken by the President of the Republic recently to increase the number of judges in certain courts, but the effects of this policy will only be visible in the next five years.<sup>456</sup>

It should be mentioned that many procedural issues depend on a country's infrastructure or pertain to other institutions and are not dependent on judges and a court's

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<sup>449</sup> Interview with rural judge no.3, 2010.

<sup>450</sup> Interview with urban advocate no.1, 2010.

<sup>451</sup> Interview with urban advocate no.2, 2010.

<sup>452</sup> Interview with urban advocate no.1, 2010.

<sup>453</sup> IDRA (2010) 'Corruption in Albania: Perception and Experience, Survey 2010, Summary of findings', p.23.

<sup>454</sup> Interview with HCJ inspector no.2, 2010.

<sup>455</sup> Interview with rural advocate no.1, 2010.

<sup>456</sup> Interview with HCJ inspector no.2, 2010.

infrastructure.<sup>457</sup> For instance, almost all the judges I interviewed said that the Court Notification Attendance (CNA) process is not effective. This is because 'the postal infrastructure and the address system are old and in many cities do not reflect the new constructions of the transition period'<sup>458</sup> (ABA/CEELI 2008:27). Litigants and advocates often abuse this weakness by not signing their receipt of the CNA, and this is 'used as a "legal" excuse for not coming to the process'.<sup>459</sup> This is one of the main factors that influence the postponement of trials (ibid).<sup>460</sup>

## Other Factors

Several of my interviewees noted that cessation of the courts also influenced the public's trust in the judicial system. In 2009 there was a reorganisation of the courts' structure. At least eight first instance courts were closed in order to minimise expenses and respond better to public demand. The rationale behind this policy was the rapid demographic transformation during the transition to democracy whereby many people moved from rural to urban areas.<sup>461</sup> All closed courts were in the hinterland, mostly in the South.<sup>462</sup>

The opinion of interviewed judges differed on this matter. Some of those in urban courts saw the reform as helpful in terms of cutting the court's expenses and distributing the case log better. On the other hand, several other judges, especially those from the hinterland, noted that the closures are having consequences on the public's perception in rural areas as it is obstructing their access to justice.<sup>463</sup> In addition, several interviewees highlighted that the process was not duly managed by the HCJ.<sup>464</sup>

Some interviewed judges and advocates suggested that the nomination of judges at a very young age is also influencing public trust in the judiciary. As one rural advocate put it, 'It is not about intelligence or professionalism but they do not have family [here], no

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<sup>457</sup> See the report on access to Albanian courts prepared by the Institute for Policy and Legal Studies (2007), 'Due Process and Human Rights in the Judicial Process' (Gjykimi i Drejte dhe te Drejtat e Njeriut ne Procesin Gjyqesor), Botimet Dudaj, p.120.

<sup>458</sup> Interview with rural judge no.8, 2010.

<sup>459</sup> Interview with urban judge no.1, 2010.

<sup>460</sup> Interview with rural judge no.7, 2010.

<sup>461</sup> See the opening speech by President Topi on the 'Annual Analysis of the High Council of Justice on the Judicial System', March 8, 2010; available at <http://www.president.al/shqip/info.asp?id=5685> [accessed August 10, 2011].

<sup>462</sup> See Presidential Decree, dated June 8, 2009, 'On Assignment of the Jurisdictional Power and Activity of the District Courts'; available at <http://www.president.al/shqip/info.asp?id=5189> [accessed August 10, 2011].

<sup>463</sup> Interview with rural judge no.5, 2010.

<sup>464</sup> Interview with international observer no.2, 2010.

experience, no one knows their income... it is enough to graduate from the School of Magistrates and you become a judge... These judges do not give you the impression that they are aware of the importance of their profession and could easily be prone to political pressure or criminals.<sup>465</sup> This is in line with a 1996 survey by Goldschmidt and Shaman on American judges, which found that age played a significant role in the importance accorded by judges to the recusal process and its appearance in the public. The older judges were more willing to withdraw from the process if any indicator of the conflict of interest rose. The authors pointed out that 'as the ages of judges increase, they have a greater tendency toward disqualification [i.e. recusal]' (1996:71).

As mentioned above, not all judges live near their workplace. There is no subsidy for them to use private transport and so many of them use low cost public transport. This influences their appearance in the public eye and contributes to a sense of low status.<sup>466</sup>

### **Individual Behaviour**

Unjustified socialisation among judges, advocates and prosecutors is also a concern evidenced by my interviews. In urban courts there are known to be unprofessional advocates, known as 'middlemen' (Sekser), who have easy access to judges.<sup>467</sup> Besides advocates, there are also third parties known for their strong contacts with public officials including judges.<sup>468</sup>

Access to urban courts is becoming more organised and sophisticated. Since 2005, the role of advocates, who are initially used to liaise with judges, is gradually being replaced by law offices. There are law offices now which have formed 'clientelist' relationships with particular judges. Political parties and organised crime know which law office is connected with particular judges and will therefore hire them.<sup>469</sup> The number of judges coming from practising law in private (i.e. as advocates or legal consultants) constituted around 40% of the total number of the judges at High Court in 2011.<sup>470</sup>

As mentioned earlier, in contrast in rural courts the litigants generally do not use advocates to access judges but tend to use family connections.<sup>471</sup> Judges are less exposed than

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<sup>465</sup> Interview with rural advocate no.2, 2010.

<sup>466</sup> Interview with rural judge no.2, 2010.

<sup>467</sup> Interview with rural advocate no.1; urban advocate no.3; investigative journalist no.3, 2010.

<sup>468</sup> Interview with investigative journalist no.1; rural advocate no.1; investigative journalist no.2, 2010.

<sup>469</sup> Interview with international observer no.3, 2010.

<sup>470</sup> See bios for each judge of the High Court on its official website; available at <http://gil.altirana.com/> [accessed August 2, 2011].

<sup>471</sup> Interview with prosecutor no.1, 2010.

prosecutors to *ex parte* meetings with criminals, and this is justified by prosecutors as being part of their profession.<sup>472</sup> Opinions vary when it comes to the public friendship of judges with prosecutors or advocates. My interviews show that in urban courts judges had slightly better relations with prosecutors and advocates,<sup>473</sup> whereas in rural courts especially in the South, prosecutors said that judges do not treat them and advocates with respect.<sup>474</sup> One explanation can be that in urban areas the social status of judges is not as evident as in rural areas where the number of high profile bureaucrats such as judges is small. So judges prefer to keep a distance from prosecutors and advocates. This is to make it more evident that judges have supposedly a privileged status in the court system grounded on the assumption that judges have the final say in a trial.<sup>475</sup>

The majority of my interviewees noted that the behaviour of advocates influences the appearance of judges to the public. Advocates often abuse their position and 'ask litigants to pay extensive fees arguing that supposedly part of it goes to the judges in the form of bribe, where in practice this is not true'.<sup>476</sup> In addition, IDRA 2010 shows that judges are frequently approached by advocates outside the courts in an attempt to influence their decisions. Almost 50% of respondent judges confirmed that fact. And the trend is worsening, with reported incidences rising by 11.6% between 2009 and 2010.<sup>477</sup> In stark

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<sup>472</sup> Interview with investigative journalist no.2, 2010.

<sup>473</sup> '...personally I have good relations with prosecutors ... It is not in any of the Codes (Criminal or Civil Code), but in Albania it has become the practice that we do not charge more than the prosecutor has asked in terms of the penalty. This tradition derives from the communist past where the prosecution office was part of the judiciary and the prosecutor sided with the judge against the defendant. But today the prosecutor is one of the parties in the process and should provide evidence to support his charge...then his evidence is challenged by the advocate...however, in a theoretical sense the prosecutor represents the state and so cannot be equal to the offenders...' Interview with urban judge no.3, 2010. An international observer pointed out: '...I've seen on more than one occasion that prosecutors who have been unprepared have been treated with considerable patience by the judges. "No, take your time; take your time finding the particular Act that you want to refer to." And then, when the defendant is given a chance to make final statements, the defendant might be warned, for example, not to waste the court's time and not to repeat anything that's been said before and so keep his statements as brief as possible and so on. Other things that I have seen are prosecutors bringing absolutely no evidence that has any value or at least not undisputed value before the court and the court simply ignoring the fact that the value has been challenged...' Interview with international observer no.3, 2010.

<sup>474</sup> Interview with rural prosecutor no.4, 2010.

<sup>475</sup> Interview with urban advocate no.7, 2011.

<sup>476</sup> '...to talk about and define judicial corruption is not easy...people often consider even the high fee of the advocate/solicitor as corruption. Many advocates or some of them abuse the system, claiming that the high fees they are asking for are intended not only for their work but also to lure the judge or the prosecutor, and this is harming the reputation of judges among the public...' Interview with urban judge no.1, 2010.

<sup>477</sup> IDRA (2010) 'Corruption in Albania: Perception and Experience, Survey 2010, Summary of findings', p.25.

contrast, 'the percentage of judges [24% in 2010] being approached by the litigants with bribes has not changed from 2009 [23.3%] and is significantly lower than in 2008 [41%]'.<sup>478</sup>

Many interviewed advocates noted that the expensive lifestyle of judges off the bench remains a concern. There are judges who have properties that they cannot justify in terms of salaries or family wealth – however, according to an interviewed judge, this does not mean that they are corrupt, because according to him there are judges who come from rich families or who have their family members working overseas who can support them financially.<sup>479</sup> Corrupt judges or advocates are known for their lavish expenditure on cars and clothes.<sup>480</sup> I personally observed with the advice of an advocate the car parks of some of the urban courts and evidenced myself that the majority of cars parked there were expensive.

According to my observations, judges in both urban and rural courts frequented more prestigious coffee shops than did advocates. In general, judges were more discreet in public and preferred quieter coffee shops during their breaks. In stark contrast, advocates visited less expensive and more crowded coffee areas. In general, judges would sit in groups of three or four whereas advocates will usually be sitting with litigants. In urban courts there were special places where judges would strike deals, but in rural courts *ex parte* meetings were more exposed in public areas.<sup>481</sup>

My data suggest that gift-giving or baksheesh is widespread in Albanian courts. As a local observer put it:

'Albanian society in general accepts gifts and there is a social justification for the gift-giving. Today even the concept of corruption is transformed and in many aspects even the concept of gift-giving has changed. If an individual is happy with the work of a public official he will give him a gift even when he is not asked to do so by the official.'<sup>482</sup>

Interviewed judges in both rural and urban courts held a confused perception of the acceptance of baksheesh. They all admitted that, ethically, baksheesh is wrong and is a form of corruption. But in practice, taking into account the social structure of Albania, a few of them noted that baksheesh should not be considered as corruption. As one urban court judge put it, 'if in a complex case the party is happy and considers me as a good friend would, and offers me a gift I would not consider it wrong'.<sup>483</sup> Another rural court judge answered, 'Even the King accepted souvenirs – the problem is to avoid doing business with parties.'<sup>484</sup> In its 2010 survey, IDRA highlights that '24% of the surveyed

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<sup>478</sup> Ibid, p.25.

<sup>479</sup> Interview with urban judge no.1, 2010.

<sup>480</sup> Interview with rural advocate no.1, 2010.

<sup>481</sup> Interview with investigative journalist no.1, 2010.

<sup>482</sup> Interview with local observer no.1, 2010.

<sup>483</sup> Interview with urban judge no.3, 2010.

<sup>484</sup> Interview with rural judge no.3, 2010.



judges said that they had been approached by litigants with bribe offers in order to influence court decision'.<sup>485</sup>

It should be noted that the equivalent of 'bribe' in the Albanian jargon is 'Rryshfet' and this differs from 'baksheesh'. The latter is often far smaller in amount and is always provided at the end of the court process. However, the term 'baksheesh' is used by both corrupt judges and advocates even in the cases when it is 'Rryshfet'. They use this language to soften the term and make it more acceptable to the litigant or each other. As one of my international observers explained, 'I think that for the most part what the judges receive would be quite directly referred to as bribe "Rryshfet"; baksheesh sounds just a bit too nice. And I suppose that judges who receive something that they might consider baksheesh would not consider it a problem simply because it's such a minor gift compared to "Rryshfet"'.<sup>486</sup>

A few interviewed judges confirmed that, in general, judges do not consider the receipt of baksheesh as wrong.<sup>487</sup> The value of baksheesh offered in rural courts is smaller and especially in the North, where criminal cases are mostly related to blood feud, the amount of baksheesh can be considered symbolic compared to that offered in urban courts.<sup>488</sup> However, judges claim that the law that regulates gift-giving is ambiguous and judges often find the subject difficult to deal with in legal terms because according to the law a public official can accept gifts with a value of less than 10,000 Albanian Lek (£70).<sup>489</sup>

In addition, several interviewed advocates noted that in rural courts prosecutors usually do not take bribes for obvious cases but only for doubtful ones. According to one rural court advocate, 'prosecutors know that judges can play around in ambiguous cases and so they abuse this fact'.<sup>490</sup>

There is a tendency for courts to formalise 'gift-giving' or the money given after the court's decision. This is in cases when judges do not ask the winning party in advance.<sup>491</sup> This usually happens when one of the litigants uses family or friendship ties to access the judge. It should be noted that favour in this setting means that the offender is found guilty but the sentence delivered is at the lowest level of the tariff for that offence.

Many interviewed judges agreed that even taking money after the decision is given is corruption, but few of them perceived that as normal.<sup>492</sup> One prosecutor highlighted that 'I

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<sup>485</sup> IDRA (2010) 'Corruption in Albania: Perception and Experience, Judges Survey 2010'.

<sup>486</sup> Interview with international observer no.2, 2010.

<sup>487</sup> '...in my opinion baksheesh is a pure form of corruption, it is a bribe and it is one of the prevalent forms of judicial corruption today in Albania. Unfortunately, judges (especially those who deal with civil cases, administrative issues, job claims, or trade issues), consider baksheesh as something normal and acceptable...however, legally and morally, this is clearly corruption...'Interview with urban judge no.2, 2010.

<sup>488</sup> Interview with rural judge no.3, 2010.

<sup>489</sup> Interview with rural judge no.7, 2010.

<sup>490</sup> Interview with rural advocate no.2, 2010.

<sup>491</sup> Interview with local observer no.1, 2010.

<sup>492</sup> Interview with urban judge no.3, 2010.

helped some businessmen by imprisoning some criminals for racketeering and I know that when I go and visit them in their city they will not let me pay for dinner, and I do not see anything wrong with this.'

## Excuses

I asked judges for their opinion on why the public has such a negative perception of judicial conduct. The majority of interviewed judges claimed that impropriety is boosted artificially by litigating parties as the public has little understanding of how the judicial process operates. According to them, in a process one party will always lose and the common view is that the loss will generally be the result of judicial corruption. As one urban court judge said, 'In Albania the losing party makes two claims, one in the appeal and one to HCJ for inspection on the grounds of corruption. And this is becoming a paradoxical phenomenon.'<sup>493</sup>

In addition, a few interviewed judges claimed that the media too plays a role in artificially amplifying the poor public image of judges. Often the media focuses on judges' expensive cars or wristwatches, but according to one judge this is misguided: 'a judge may have friends who can offer these gifts and this should not be the main concern of the media but instead they should focus on judges owning restaurants, three houses and hotels'.<sup>494</sup> As mentioned in Chapter 3, according to my observations, judges were very anxious about journalists. And this may relate to the huge power that media has today in Albania and which can easily be misused to attack or blackmail judges for close interests. I explain this relationship in Chapter 7.

Interviewed judges also highlighted that impropriety is often influenced by unprofessional advocates.<sup>495</sup> Usually, an advocate hides his or her incompetence in defending a case under an untrue claim that the judge was corrupt.<sup>496</sup> Judges also claimed that the public disciplining of judges has a negative effect on the reputation of judges in general. According to an urban court judge, public disciplinary proceedings 'have an immediate effect on the parties' perception of the impartiality of the judge and automatically the judge is prejudiced by them as being corrupt'.<sup>497</sup> Judges' awareness of ethical behaviour is

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<sup>493</sup> Interview with urban judge no.9, 2010.

<sup>494</sup> Interview with urban judge no.3, 2010.

<sup>495</sup> My findings correspond with IDRA 2010 which notes that '48.4% of the judges declared that lawyers do approach them outside the court in order to influence decisions. This percentage is 11.2 percentage points higher than in 2009'. IDRA (2010) 'Corruption in Albania Perception and Experience: Judges Survey 2010'.

<sup>496</sup> Interview with urban judge no.4, 2010.

<sup>497</sup> Interview with urban judge no.1, 2010.

particularly high. Although judges are trained and have periodic workshops on the issue of ethics their professional behaviour off the bench is often improper.<sup>498</sup>

Interviewed advocates and judges noted a common pattern of deviance inherited from the communist period. At that time judges had limited chances to favour their friends or relatives and the only way was to give a lenient sentence within the margins of the law. For instance, if the law says that someone can be charged with between five and ten years' imprisonment, the judge would give the minimum sentence and this was considered a 'favour within the limits of the law'.<sup>499</sup>

My interviews suggest that this pattern had become a subculture in the community of judges. The majority of interviewed judges regarded this pattern as not being a significant problem when used for friends and not for commercial benefits.<sup>500</sup> However, some admitted that many judges exploit their discretion to 'sell' years by discounting the sentence.<sup>501</sup> Several interviewed advocates highlighted that there is a 'price list' for that too.<sup>502</sup>

## Equality

The BPJC regard 'equality' as among the most important values in terms of judicial decision-making. Equality requires that judges have legal expertise in key conventions against discrimination and civil and political rights (Commentary 2007:121). Equality is about the inner conscience of a judge and his outward performance in the court. Preserving equality is not only fundamental for justice but is also important for upholding the prestige of the judiciary (ibid:121). When assessing a case, a judge should avoid any sort of prejudice, stereotype and gender discrimination (ibid:122). Equality entails that judges recognise values deriving from diversity and be open to cultural differences (ibid:123). Any manifestation of bias or prejudice through words or actions should be avoided in and out of the courtroom by judges and parties in the process (ibid:124-127).

It is very hard to gain a correct impression of the prejudices or stereotypes of Albanian judges because no studies or surveys have been made so far (ABA/CEELI 2008). My interviews and observations suggest that 'equality' is an area in which Albanian judges perform comparatively better. There are many cultural and historical factors that lay out a solid foundation for Albanian judges to be moderate on issues of race, religion, cultural diversity and gender. Albania takes pride in its reputation for religious harmony (Clayer

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<sup>498</sup> Interview with rural judge no.1, 2010.

<sup>499</sup> Interview with urban judge no.3, 2010.

<sup>500</sup> Interview with urban judge no.3, 2010.

<sup>501</sup> Interview with urban judge no.4, 2010.

<sup>502</sup> Interview with urban advocate no.3 and no.6, 2010.

2010). Since 1912, ethnicity and religion<sup>503</sup> have neither been a barrier to judges' careers nor a reason for judges to discriminate. In certain periods of history, justice was governed by people with a minority religious background such as Orthodox Christianity, despite the dominant religion in Albania being Islam (Elezi 1999). In addition, in 1996 Albania ratified the European Convention on Human Rights (ABA/CEELI 2004:13).

However, during the communist period, there were some stereotypes and prejudices mainly grounded on ideological concerns (Gjoliku 2009). Judges for instance were more positive toward individuals who had participated as partisans in the Second World War (ibid:241). Litigants with a family background of wartime political opposition to communists, such as membership of the 'Balli Kombetar' or 'Legaliteti', were often discriminated against (ibid:249). Although informal, 'Krahinizem' (regionalism) was also a cause for favours and prejudice during communism.<sup>504</sup> Judges of the High Court were also engaged actively in religious discrimination either by way of court decisions or propaganda (ibid:216).

The current Albanian Constitution contains a series of articles stipulating against discrimination on the grounds of race, religion, ethnicity, language, political, religious or philosophical beliefs, education, parentage, as well as economic and social status.<sup>505</sup> Albania also has the institution of Ombudsman, called the People's Advocate, who has a significant role in protecting individual rights against unlawful or improper actions from public administration including violation of human rights as a result of administration of the judiciary (ABA/CEELI 2006:24).

In 2008 a new law on protecting gender equality was enacted.<sup>506</sup> As late as 2010, in accordance with all European Conventions, a special law against discrimination was approved by the Albanian Parliament.<sup>507</sup> There also exists the Ombudsman-like post of Commissioner for Protection from Discrimination.<sup>508</sup> In 2010, there were only six cases brought before the Commission and none of them was connected to any sort of discrimination in the judiciary or during the court process.<sup>509</sup>

There are no statistics regarding the religious and ethnic composition of judges during the transition to democracy (ABA/CEELI 2001:8). It is reported, however, that in the late 1990s in the South, the majority of judges in the first court of Saranda were ethnic Greeks. The

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<sup>503</sup> According to the 1939 census, there are three main religions recognised in Albania: Islam (70%), Christian Orthodox (20%) and Roman Catholic (10%). Ethnicity is composed of: 98.6% Albanians, 1.17% Greeks, 0.23% others (Vlachs, Roma, Serbs, Montenegrins, Macedonians, Balkans). See US Department of State (2011) 'Background Note: Albania', Bureau of European and Eurasian Affairs, January 4; available at <http://www.state.gov/r/pa/ei/bgn/3235.htm> [accessed August 12, 2011].

<sup>504</sup> Interview with academic no.1, 2010.

<sup>505</sup> See Albanian Constitution art.18 particularly, and Chapter 2 more generally.

<sup>506</sup> See Law on 'Gender Equality in Society' no.9970, dated July 24, 2008.

<sup>507</sup> See Law Against Discrimination no.10221, dated February 4, 2010.

<sup>508</sup> See Law Against Discrimination no.10221, dated February 4, 2010, art.21.

<sup>509</sup> Keta, E. (2010) "'Discrimination" Fails: 10 million leke for 6 claims' (Deshton 'Discriminimi': 10 milione leke per 6 ankesa', *Shiptare Gazette*, February 24.

community there claimed that this was unfair and disproportionate for Albanians (ibid:8). At that time, one member judge of the High Court, out of 17 in total, was ethnic Greek (ibid:8).

While ethnic Greeks were well represented in several courts, less privileged classes of society such as the Roma community, were not (ibid:8). My interviews suggest that in the early period of democracy there were prejudices among the community of lawyers against politicised judges. In the period 1990-98 expressions such as 'judge of democracy', 'communist judge' or 'six-months judge' were often used as stereotypes for unprofessional and politicised judges.<sup>510</sup> Although not frequent, these stereotypes are still part of the rhetoric of the community of lawyers.<sup>511</sup>

Ethnic background and religious affiliation are not criteria used to assess students who apply to the School of Magistrates (ABA/CEELI 2004:11). It is difficult, however, to tell whether there is discrimination in the appointment of judges on the grounds of ethnic or religious beliefs as there are no statistics prepared by the Ministry of Justice that include these variables for assessment (ABA/CEELI 2006:19). That said, there is a persistent concern among lawyers as to why the Roma community is not integrated in the judicial structure (ABA/CEELI 2008:17).

To date, discrimination on religious grounds is almost absent but there may be rare occasions where parties may be discriminated against for their appearance, religious clothing or symbols – such as a long beard, headscarf or visible cross. Such prejudices may be more evident in the courts of the North and South where religious division is more sensitive.<sup>512</sup> Similarly, 'former communist judges' and 'judges of transition' are regarded as thinking about religion in a more stereotypical way than 'Magistrates', who tend to be more 'open minded'.<sup>513</sup> According to one of my interviewees, discrimination on religious grounds is more evident among prosecutors than judges.<sup>514</sup>

There is little evidence regarding discrimination on the basis of ethnicity, as was confirmed by my interviewees. But, a few interviewed judges noted that some rural judges regard other ethnicities, such as Greeks in the South or Montenegrins in the North, as in some way superior.<sup>515</sup> Several interviewees highlighted that there are sporadic problems with racial discrimination in both rural and urban courts. This is often the case with litigants from the Roma community. Whereas there is no clear evidence of discrimination in criminal cases, signs of prejudice against the Roma community are more common in civil cases. Interviewed judges said that the most evident cases are those concerning property rights.<sup>516</sup>

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<sup>510</sup> Interview with rural advocate no.1, 2010.

<sup>511</sup> Interview with investigative journalist no.1, 2010.

<sup>512</sup> Interview with urban advocate no.7, 2010.

<sup>513</sup> Interview with rural judge no.7, 2010.

<sup>514</sup> Interview with rural judge no.9, 2011.

<sup>515</sup> Interview with local observer no.2, 2011.

<sup>516</sup> Interview with urban judge no.9, 2010.

A few interviewees noted that younger judges in general are more tolerant and less prejudiced whereas, in contrast, older judges are more conservative.<sup>517</sup> One of the main factors for this diversity of perception is that 'Magistrates' are better trained in national law and international conventions against discrimination. According to ABA/CEELI (2008:23), 'Judges, to varying degrees, are familiar with the European Convention on Human Rights and other international law norms. The younger generation of judges, in particular, who are graduates of the MS [School of Magistrates], are familiar with the Convention, whereas more senior judges are generally less so.'

My interviews suggest that gender discrimination in the Albanian judiciary is rare. At least 40% of judges are women, and 90% of people working in judicial administration are also women, as are 80% of applicants to the SOM.<sup>518</sup> There has been a steady increase in the numbers of women in appeal courts and the High Court. Over the period 2006-08, in appeal courts the proportion increased from 32.3% to 33.3% and in the High Court from 26.7% to 35.3%.<sup>519</sup> Currently, the Chief Judge of the High Court and the General Prosecutor are both women. In 2010 there were courts occupied by female judges alone, such as the first instance court of Kruje.<sup>520</sup> So gender discrimination overall is not an issue.

Although gender discrimination is very rare, some judges admit that there is a kind of discrimination on social status.<sup>521</sup> Discrimination on social status is more obvious in rural courts<sup>522</sup> and in the first instance courts as the number of cases presented there is comparably higher than in other instances of the courts. In addition, in the first instance, parties meet face to face with judges whereas in other upper courts they are generally represented solely by advocates.<sup>523</sup>

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<sup>517</sup> Interview with urban judge no.2, 2010.

<sup>518</sup> See the opening speech by President Topi on the 'Annual Analysis of the High Council of Justice on the Judicial System', March 8, 2010; available at <http://www.president.al/shqip/info.asp?id=5685> [accessed August 10, 2011].

<sup>519</sup> Data collected from ABA/CEELI 2006:19, and ABA/CEELI 2008:18.

<sup>520</sup> Interview with rural judge no.1, 2010.

<sup>521</sup> Interview with rural judge no.7, 2010.

<sup>522</sup> Interview with rural judge no.7, 2010.

<sup>523</sup> Interview with rural judge no.2, 2010.

## Competence and Diligence

While there have been significant improvements in the criteria for appointing judges, their level of professionalism remains a concern. In the period 1990-2001 there were three main routes for the community of lawyers to join the judiciary.<sup>524</sup> The first route to the judiciary was via a legal qualification either from the SOM or a postgraduate degree in law from overseas. The second route was for those candidates with considerable legal experience with courts or judicial policies either working as lecturers at public law schools or as legal experts in public institutions. The third route was for candidates who had some professional connections with the judiciary, such as former judges, advocates or public notaries.

Candidates for appeal courts and serious crime courts, in addition to the above criteria, were required to 'have worked for at least five years as judges in first instance courts and to have demonstrated "high ethical, moral and professional standards in the exercise of their duties"' (ABA/CEELI 2004:3). For the High Court, requirements were very broad: either the candidates be judges with ten years' work experience or 'known professional lawyers' practising law for at least 15 years.<sup>525</sup> Similarly for the Constitutional Court, the only professional requirement for candidates was to be 'lawyers with high qualifications and with work experience not less than 15 years in the profession' (Albanian Constitution art.125).

Those who graduated from the SOM followed an intensive three year professional course, with the first year being very theoretical, the second more practical where students practise in the courts, and the third where students practise as real judges or prosecutors supervised by professional judges.<sup>526</sup> By contrast, for 'non-Magistrate judges', the only qualification required to become a judge was the possession of a law degree (ABA/CEELI 2008:13). In 2001, only judges with less than five years' experience were required to follow the legal training organised by the School of Magistrates (ABA/CEELI 2001:3).

The poor standard of law schools was a great concern and according to periodic reports, teaching materials and methods, infrastructure and teaching strategies were outdated (ABA/CEELI 2004:6). Albanian legal training was focused more on theoretical rather than practical aspects, such as legal reasoning, methods of legal research, legal writing and argumentation (ibid:6).

In 2005 there were some significant improvements in terms of judicial professionalism.<sup>527</sup> The SOM for the first time planned a three-year Continuing Legal Education (CLE) programme (ABA/CEELI 2006:1). All judges since then have been required to participate in

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<sup>524</sup> In 1990-2001, the basic criteria for a candidate to become a judge were a law degree, no criminal record, good reputation, and being no less than 25 years old.

<sup>525</sup> See Law 'For the Organisation and Functioning of the High Court of the Republic of Albania' no.8588, dated March 15, 2000, art.3.

<sup>526</sup> Interview with academic no.1, 2010.

<sup>527</sup> Interview with rural judge no.3, 2010.

the CLE. Training is organised and managed by the School and judges are required to attend the CLE for a minimum of 20 days per year or 60 days every five years.<sup>528</sup> Furthermore, in 2005, as part of the EU requirement to improve education standards and harmonise them with the EU, Albania signed the Bologna Declaration. Accordingly, the University of Tirana, Faculty of Law, restructured the degree process whereby a legal degree was earned after the completion of four years plus an additional year of a postgraduate degree (ABA/CEELI 2008:12).

The Bologna process brought several implications to Law School programmes, as new and unfamiliar courses were included and new modules were added.<sup>529</sup> Academic staff were not trained and teaching materials in the Albanian language were absent.<sup>530</sup> In a situation of rapid change of both the political and legal system, modern literature was scarce, and therefore foreign scholarly materials from the West were poorly translated and included in the curriculum without any clear teaching strategy (ABA/CEELI 2008:12). The opening of a few private law schools in 2003 increased competition, and as a result the full time staff of public schools moved or taught in both interchangeably.<sup>531</sup>

In 2007, teaching methods in both public and the few good private law schools improved.<sup>532</sup> The number of modules taught in both increased, including a wide range of subjects in response to societal development such as human rights, environmental law, cybercrime, legal writing and reasoning, legal ethics, legal sociology, gender equality and the law.<sup>533</sup> Yet there were still concerns about the lack of academic staff and poor infrastructure (ABA/CEELI 2008:13). More interactive and practical forms of teaching were implemented such as moot courts and discussions on hypothetical cases (ibid:12). The impact of the SOM in terms of training was highly appreciated by the community of judges and the public in general.<sup>534</sup>

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<sup>528</sup> Attendance at the CLE is recorded and is part of judges' evaluation (ABA/CEELI 2006:9). The School of Magistrates also publishes a quarterly academic law journal, *Jeta Juridike* (Legal Life) (ABA/CEELI 2008:14).

<sup>529</sup> Interview with urban advocate no.1, 2010.

<sup>530</sup> Interview with urban advocate no.5, 2010.

<sup>531</sup> Interview with urban judge no.2, 2010.

<sup>532</sup> Interview with urban advocate no.6, 2010.

<sup>533</sup> Interview with urban advocate no.1, 2010.

<sup>534</sup> In 2008, the President of the Republic awarded the School with the Medal of Recognition (ABA/CEELI 2008:14).



## Education

Interviewed judges noted that they were satisfied with the SOM but they also highlight that the academic structure of this school needs further improvement.<sup>535</sup> A few interviewed judges and advocates noted that its curriculum is not very different from that of the public law schools.<sup>536</sup> Similar core modules taught in the law schools are rehearsed in a more comprehensive way at the SOM.<sup>537</sup> Teaching materials and lecturers too are almost the same in terms of quality.<sup>538</sup> Most texts on core modules such as Penal Codes and their commentaries are based on former communist literature or are poor translations of foreign texts from the early 1990s.<sup>539</sup>

My interviews suggest that recruitment to the SOM is also a problem. Law students recruited are not among the most excellent students in the country.<sup>540</sup> The best lawyers usually follow postgraduate courses overseas and go on to practise law in the private sector.<sup>541</sup> As one advocate put it, 'those who apply at the SOM are the best of the worst'.<sup>542</sup> There is no procedure that screens law students who apply for the SOM. The examination process for candidates to the SOM was viewed by many of my interviewees as not very efficient. In the first couple of years, the entrance examination looked at various characteristics of the candidates such as charisma, professional knowledge and appearance.<sup>543</sup>

There were two forms of exam – oral and written.<sup>544</sup> The exam process was closely supervised by international observers. After five or six years, however, the quality of the examination process declined because the number and the role of international observers decreased. On rare occasions candidates even offered bribes to get accepted.<sup>545</sup> According

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<sup>535</sup> Interview with urban court judge no.5, 2010.

<sup>536</sup> Interview with urban advocate no.1, 2010.

<sup>537</sup> Interview with urban advocate no.1, 2010.

<sup>538</sup> Interview with urban advocate no.5, 2010.

<sup>539</sup> Interview with urban prosecutor no.5, 2010.

<sup>540</sup> Interview with urban advocate no.1, 2010.

<sup>541</sup> Interview with urban judge no.5, 2010.

<sup>542</sup> '...another problem is the School of Magistrates (SOM)... what this School is able to attract in terms of lawyers. In fact, SOM is presumed to attract the best lawyers in the country, but there are many cases, and I know specific names, who have been recruited but have not been the best....because the best lawyers go for post-graduation overseas. .... so effectively, despite some exceptions, those who apply to the SOM are the best of the worst or the best of those who have not been able to succeed in finding a scholarship to study overseas...' Interview with urban advocate no.1, 2010.

<sup>543</sup> Interview with urban judge no.9, 2010.

<sup>544</sup> Interview with urban judge no.7, 2010.

<sup>545</sup> Interview with rural advocate no.1, 2010.

to an interviewed international observer, there is ‘talk of candidates who offered to pay up to 30,000 euros to get accepted in the SOM’.<sup>546</sup> This is confirmed even by international reports.<sup>547</sup>

Other interviewees suggested higher figures. This was also confirmed by the European Council experts in their 2010 report which highlighted that ‘several sources insist that facts of corruption happen in the phase of the appointment of the judges (or the admission of future judges at the SOM), where bribes are asked from the candidates. Once appointed, the magistrates ask bribes themselves, partly as a “return on investment”’.<sup>548</sup> So this finding implies that judicial corruption finds roots at the education phase of judges.

In addition, there were no entrance criteria regarding candidates’ ability to speak foreign languages and this was having a negative impact on future judges’ access to both international law literature and courts’ decisions. This issue was debated by the Executive Committee of the SOM but no suitable criteria were implemented because many full-time academics working in this school had very limited knowledge of foreign languages.<sup>549</sup>

It was as late as 2011 that English was included as a core requirement for candidates, but still recognition by the certified body is vague.<sup>550</sup> It was not by chance that international reports noted that a lack of knowledge of foreign languages was one of the main obstacles for judges in accessing cases of the European Court of Human Rights (ECHR) in 2004 because they were in English and French (ABA/CEELI 2004:13). Even today, judges find it difficult to understand ECHR decisions as these may not be fully translated into Albanian.<sup>551</sup>

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<sup>546</sup> Interview with international observer no.3, 2010.

<sup>547</sup> See Global Integrity Report (2010) ‘Global Integrity Report: Albania 2010’, Washington DC, USA; available at <http://www.globalintegrity.org/report/Albania/2010/notebook> [accessed January 25, 2012].

<sup>548</sup> See the Expert Report prepared by Francis Desterbeck and Thierry Loquet for the European Commission, titled ‘Rule of Law Mission: The Fight Against Corruption’, June 7-11, 2010 (unpublished). This report is mentioned in several Albanian media. For instance see Neza, A. (2011) ‘Why so much fear from the lifting of immunity’ (Pse gjithë kjo frike nga heqja e imunitetit), *Panorama Gazette*, September 22.

<sup>549</sup> Interview with the urban advocate no.5, 2010.

<sup>550</sup> See Zhilla, F. (2011) ‘The judicial reform should start from the School of Magistrates’ (Reforma në gjyqesor duhet të fillojë nga Magjistratura), *Mapo Gazette*, October 4.

<sup>551</sup> Interview with urban judge no.9, 2010.

## Training

In general the community of judges is satisfied with the CLE. The training programmes are updated and contextualised,<sup>552</sup> and judges are asked to review and propose ideas to the SOM (ABA/CEELI 2008:16) which are then reviewed by the School. Judges' suggestions are included in the final plan which is subsequently scheduled and circulated to all judges for information and judges are free to select those training sessions they want to follow (ibid:16). The curriculum includes a variety of subjects and topics.<sup>553</sup>

The CLE is composed of both local and international experts<sup>554</sup> suggested either by the SOM, judges or legal professions (ibid:16). However, several interviewed judges and prosecutors noted that 'they were not happy with the quality of some international trainers'.<sup>555</sup> Their concern was that international trainers 'do not contextualise their lectures in terms of the demands of the community of judges and prosecutors'.<sup>556</sup> A few interviewees commented that international experts were sometimes 'rather young and lacked work experience and often had difficulty in understanding the socio-legal complexities of Albanian society'.<sup>557</sup>

Whereas judges have benefited from the CLE training, other equally important actors in the judicial process such as advocates, bailiffs and judicial legal assistants are not included in this training programme (ABA/CEELI 2008:14). My interviews suggest that 'Magistrates' are better educated on international conventions and refer more to decisions of the ECHR,<sup>558</sup>

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<sup>552</sup> Interview with urban judge no.7, 2010.

<sup>553</sup> Interview with urban judge no.9, 2010.

<sup>554</sup> The CLE has been continuously supported by OSCE, USAID and the Council of Europe on key areas such as the European Convention of Human Rights, Teaching Methodology and Judicial Ethics. For more see ABA/CEELI 2008:17.

<sup>555</sup> Interview with urban prosecutor no.4, 2010.

<sup>556</sup> Interview with urban judge no.6, 2010; urban prosecutor no.4, 2010; rural advocate no.1, 2010

<sup>557</sup> 'This is a problem with the international assistance given to the judiciary these days. These missions overstep their role and function (assistance) and become lawmaker missions... they determine our legal needs, deal with the formatting of the laws and lead the process of law-making from beginning to end. What is the problem? The problem is that we are conformists in the sense that it is enough for us to have a good rapport with internationals and so we accept everything they serve us. So we have missions from the EU and USA which are often contradictory, maybe because of the disorganisation... foreign experts are rather young and lack work experience and often have difficulty in understanding the socio-legal complexities of Albanian society... in this context the questions raised are whether these experts are able to produce, suggest, and assist with laws which are beneficial to our country. And I see a drawback here. In principle they have a useful role, because we are a new democracy without experience and need international assistance... even with such poor expertise we can learn something...however, they rush too much in the law-making process, and they are sometimes tied to the politics of the day. In my experience, I feel really sorry to see how foreign experts start to behave as Albanians after spending some time here.' Interview with urban prosecutor no.4, 2010.

<sup>558</sup> Interview with urban judge no.9, 2010.

whereas older judges have problems in utilising both because they are not schooled in modern legal analytical methods and have poor knowledge of foreign languages.<sup>559</sup> In general the CLE appears to be progressing well and its positive influence on the professionalism of judges was shown in the latest ABA/CEELI reports (2006 and 2008), where the indicator on continuing legal education scored positive.

## Professionalism

Several interviewed advocates thought that the professional standards of many judges were below average. One interviewee considered that at least 60% of judges were substandard.<sup>560</sup> In contrast, almost all interviewed judges, both urban and local, including a few advocates, noted that the professional performance of advocates was worst. One high court judge regarded lack of professionalism as the main problem of judicial corruption today.<sup>561</sup>

In terms of prosecution, those prosecutors working in the General Prosecutor's Office (GPO) are more professional than first instance and appeal court prosecutors. A reason for this, according to one interviewee, is that they have better access to CLE.<sup>562</sup> Both the GPO and the SOM are located in the capital city, Tirana.

**Magistrates v. Non-Magistrates:** My interviewees highlighted that among the categories of judge, 'six-months judges' and 'judges of transition' have a better legal qualification. The category of 'Magistrates' was perceived to be more professional.<sup>563</sup> The majority of interviewees noted that the main difference in terms of competence and due diligence among the categories of judge is that 'Magistrates' 'are more rigorous with procedures and better reasoned in their court decisions', whereas, by contrast, the two categories

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<sup>559</sup> See also ABA/CEELI 2004:13 and 2008:23.

<sup>560</sup> Interview with urban advocate no.2, 2010.

<sup>561</sup> '...I would highlight lack of professionalism as the main factor of judicial corruption. Of course another serious problem is bribes which again are associated with the lack of professionalism. In fact, I put lack of professionalism first because I note that where there are improvements in the court system generally you see that there are courts' decisions with, for example, poor reasoning... you say how is it possible that they are at that substandard level? Obviously this is not a general phenomenon (poorly reasoned decisions), because you also see very well argued decisions, there are very good judges but there are very poor judges too. Therefore I would highlight lack of professionalism as a primary factor impeding the progress of the judiciary. And of course, corruption is related to this (professionalism). In addition, political influence is another factor and this also is related to professionalism. Non-professional judges are often those who allow politicians to influence them...'Interview with urban judge no.5, 2010.

<sup>562</sup> Interview with local observer no.1, 2010.

<sup>563</sup> Interview with urban advocate no.1, 2010.

mentioned above 'do not always follow all procedural steps or respect ethical requirements during the process'.<sup>564</sup>

As a result, a few interviewed advocates claimed that in general, courts' decisions issued by 'non-Magistrates' are characterised by 'poor reasoning, do not refer to the proper law and are very ambiguous'.<sup>565</sup> On the other hand, my data reveal that even among 'Magistrates' the standard of professionalism varies. Although there is no statistical evidence as yet, one of the interviewed judges said that, 'of around 150 "Magistrates" the standard of competency is relatively good but around 30 of them can be considered as being very professional'.<sup>566</sup>

My interviewed judges and judicial inspectors also suggested that although 'Magistrates' are generally more skilled in argument than 'non-Magistrates' this does not mean that their decisions are necessarily correct, rather 'it can be said that they use more sophisticated and technical language'.<sup>567</sup> 'Magistrates' have a better command of Western European languages such as English, French and Italian, whereas many 'non-Magistrates' 'have little knowledge of Italian but a strong command of Russian'.<sup>568</sup>

**First instance v. Other instances:** My interviews suggest that judges of the first instance courts especially in the rural courts perform better professionally.<sup>569</sup> In the urban courts, such as both the first instance and Appeal court of Tirana, the situation is of greatest concern. There the perception is of both professional and very unprofessional judges.<sup>570</sup> In general, the level of professionalism in the appeal courts is perceived by the community of lawyers as poor. This is especially evident in urban appeal courts because 'the promotion of judges in these courts in 2009-11 was not transparent and based on merit'.<sup>571</sup> In rural appeal courts the quality is slightly better and the trend is positive, especially in the North.<sup>572</sup>

The majority of interviewees noted that judges of the Constitutional Court, before the new entrants in 2010-11, were perceived as better professionally than judges of other courts.

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<sup>564</sup> Interview with urban advocate no.2 and no.8, 2010.

<sup>565</sup> Interview with urban advocate no.2, 2010.

<sup>566</sup> Interview with rural judge no.7, 2010.

<sup>567</sup> Interview with inspector of HCJ no.2, 2010.

<sup>568</sup> Interview with inspector of HCJ no.2, 2010.

<sup>569</sup> '... the professional level of judges generally leaves much to be desired. Over 60% are below the average of lawyers in Albania. "Magistrates", who are more in the first instance courts, have higher professional standards compared with "Non-Magistrate" judges...' Interview with urban advocate no.2, 2010.

<sup>570</sup> Interview with rural judge no.4; urban judge no.7, 2010.

<sup>571</sup> Interview with rural judge no.2, 2010.

<sup>572</sup> Interview with rural prosecutor no.1, 2010.

Judges of the High Court were highlighted as being substandard,<sup>573</sup> and as one local observer put it, 'the High Court has always been perceived by the public as the court of anonymous judges'.<sup>574</sup> Another rural court judge of first instance pointed out that 'where judges of first instance want to find a precedent for poor decisions they refer to decisions of the High Court'. Two reasons for the better performance of the Constitutional Court are attributed to the infrastructure and to the professional level of judges' assistants.<sup>575</sup>

Judges of both serious crime courts (i.e. first instance and appeal) are among the most professional and this was highlighted in most of my interviews, but even here my interviews suggest that 'the most qualified judges are to be found in the first instance where the number of Magistrates is higher'.<sup>576</sup> When asked about the professional standards of judges, one former constitutional court judge told me that 'I am very happy with the first instance courts, not as much with appeal courts and less with the High Court'.<sup>577</sup>

**Criminal v. Civil cases:** Judges perform better in criminal cases because according to interviewed judges and prosecutors 'the nature of these cases tends to be simpler in procedural terms compared to civil ones'.<sup>578</sup> Another supporting argument noted by interviewees was that 'whereas in civil law there was an interruption of legal development during communism, in stark contrast, although highly politicised, the legal tradition on criminal law persisted'.<sup>579</sup> However, the differences in judges' due diligence between civil and criminal cases are not actually that significant. Issues of poor reasoning and shortcomings in the courts' procedures have been found even at criminal cases, especially in the appeal courts.<sup>580</sup>

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<sup>573</sup> Interview with urban judge no.5, 2010.

<sup>574</sup> Interview with local observer no.1, 2010.

<sup>575</sup> Interview with rural judge no.7, 2010.

<sup>576</sup> 'The Courts of Serious Crimes (first instance and appeal) are better because of their specifics (dealing with serious organised crime groups) and because judges who are selected to work there are carefully scrutinised. In addition, judges of these courts have some privileges and are paid better in comparison with their colleagues. The most qualified judges are to be found in the first instance courts where the number of Magistrates is higher. Apparently some of the judges in the first instance courts are very serious, have thought very carefully about their future career, and therefore give very courageous decisions. However, a good part of their decisions are overruled at a higher level...' Interview with investigative journalist no.2, 2010.

<sup>577</sup> Interview with rural judge no.7, 2010.

<sup>578</sup> Interview with urban advocate no.1, 2010.

<sup>579</sup> Interview with academic no.1, 2010.

<sup>580</sup> See OSCE (2007) 'Analysis of Criminal Appellate Proceedings in Albania', p.12.

## Factors Impairing Professionalism

Some of the concerns raised by interviewed judges regarding professionalism were related to the level of skills, unfamiliarity with both international conventions and international courts' decisions, and inconsistency in the legal tradition of the rule of law in Albania.<sup>581</sup> Inadequate methodological training was also an issue.<sup>582</sup> Interviewed judges thought that more training in legal writing and reasoning is needed. Teaching at the law schools and training at the SOM were insufficient.<sup>583</sup>

The lack of a traditional legal school is another problem.<sup>584</sup> The rapid change to laws and legal approaches during transition has made it very difficult to have a uniform and solid legal system. Academics have changed, as have teaching methods and the structure of courses.<sup>585</sup> In addition, both traditional and current academic research on the Albanian legal system has been lacking.<sup>586</sup> The mushrooming of private law schools recently, without their being certified or duly credited by the Ministry of Education and Science, is also of growing concern (ABA/CEELI 2008:13).

All these factors have impacted legal education and teaching policies in law.<sup>587</sup> There is also an increasing concern among the international community about the competence and due diligence standards of Albanian judges (Miklau 2009:46). That said, there have been a few attempts by Albanian governments to increase the professional level of judges. The opening of specialised courts such as serious crime courts and the division of courts in civil, penal, commercial, administrative and family issues have increased the professionalism and efficiency of judges.<sup>588</sup> These findings suggest that judges working on those courts where corruption is widespread (i.e. appeal courts and the High Court) not only lack integrity but also professionalism.

To summarise, judicial corruption is widespread in Albania at all levels of court but more evident in appeal courts and the High Court. My data show that judges of appeal courts and especially of the High Court suffer more from the lack of integrity and professionalism than the lower level court judges. Among judges, prosecutors and advocates, the latter were considered to suffer the greatest lack of integrity. The 'six-months judges' were comparably viewed by interviewees as having less integrity and as being less professional, followed by (in rising order of integrity) 'post-communist judges', 'judges of transition' and 'Magistrates'.

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<sup>581</sup> Interview with urban judge no.2, 2010.

<sup>582</sup> See also IDRA (2010) 'Corruption in Albania Perception and Experience: Judges Survey 2010'.

<sup>583</sup> Interview with urban judge no.9, 2010.

<sup>584</sup> Interview with urban judge no.6, 2010.

<sup>585</sup> Interview with urban advocate no.1; urban advocate no.5, 2010.

<sup>586</sup> Interview with rural judge no.7, 2010.

<sup>587</sup> Interview with urban judge no.2, 2010.

<sup>588</sup> Interview with the former Minister of Justice Enkelejd Alibeaj, 2010.

In rural courts, family ties and personal relations with judges were evident patterns of informal access to judges. In contrast, in urban courts, friendship ties, political influence or other commercial tactics such as bribes or exchange of favours were more common. It also appears that blood feud and the reputation of family name plays a positive role in restraining judges from corruption. There is also a notable tendency for patterns of judicial corruption in rural courts to mimic those in urban areas. Judicial corruption is more common in the main urban courts where the level of 'business disputes' is higher. My interviews suggest that corruption is more widespread in civil and administrative cases that deal with property rights.

And finally, this chapter shows that individual factors also play a significant role in judicial corruption while the dynamic is slightly different between rural and urban courts. I also evidenced that judges have developed their subculture. In addition to two patterns highlighted in Chapter 4 – 'covering up of colleagues' mistakes' and 'silent agreement' with powerful elites – in this chapter three other patterns were made evident: (a) the 'favour within the limits of the law', (b) two common 'excuses' for why the public has a bad perception of judges (i.e. the losing litigant and unprofessional advocates), and (c) the legitimisation of gift-giving or baksheesh in situations when this is provided by litigants as a reward.



## THE INTERPLAY BETWEEN ORGANISED CRIME AND JUDICIAL CORRUPTION

In Chapters 4 and 5 I showed the degree of judicial corruption in Albania and analysed some of its patterns. The focus was on the judiciary and its interplay with external factors (political and social) and internal factors (personal and structural). In this chapter I look at the role of organised crime. There is a growing literature which emphasises a strong relationship between organised crime and judicial corruption (Van Dijk 2007; Buscaglia and Van Dijk 2003; Della Porta 2001; Ruggiero 2000; Della Porta and Vannucci 1999).<sup>589</sup> In addition, organised crime is not only a factor of corruption in post-communist societies but has also become a concern in EU states in recent years.<sup>590</sup> In this context, limiting the analysis of external factors to only socio-political actors would not be helpful in answering my research questions. Taking these elements into account, this empirical chapter is devoted to organised crime and its relationship with both judicial corruption and the political elite.

This chapter offers a comprehensive analysis of organised crime and its consequences for judicial corruption in the transition period of 1989-2011. As in previous empirical chapters, in addition to interviews, I have used different sources and here I also review the memories of some active participants during the transition period. The most relevant recollections referenced are those of Alexander Moisiu (former president of Albania 2002-07); Prec Zogaj (a political activist and writer since 1990) and Mero Baze (a journalist since 1990).

This chapter starts with a short background and definition of organised crime. I show how it is perceived by different categories of my respondents. In this section I also highlight that there are two forms of organised crime which use different mechanisms to undermine the judiciary. I then turn to the dynamics of organised crime and its patterns. I have divided this part into two large sections based on developments in organised crime during 1990-2011. In the first section I describe the patterns of organised crime during the early phase of transition (1990-98). I elucidate three main socio-political factors that gave rise to the rapid

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<sup>589</sup> See also Center for the Study of Democracy (2010) 'Examining the Links between Organised Crime and Corruption', European Commission; available at [http://ec.europa.eu/home-affairs/doc\\_centre/crime/docs/study\\_on\\_links\\_between\\_organised\\_crime\\_and\\_corruption\\_en.pdf](http://ec.europa.eu/home-affairs/doc_centre/crime/docs/study_on_links_between_organised_crime_and_corruption_en.pdf) [accessed February 20, 2012].

<sup>590</sup> See European Commission (2012) 'Special Eurobarometer 374: Corruption Report', TNS Opinion & Social at the request of Directorate-General Home Affairs, February, p.8; available at [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_374\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf) [accessed February 20, 2012].

development of organised crime during this period. In the second section I discuss the 'sophistication' phase (2001-11). In the next section I focus more on my data and analyse patterns of influence, the mechanisms and correlation between organised crime and judicial corruption to date. Finally I show the mechanism of judicial corruption in a criminal case and explain the role of key actors (state or judicial police, advocates, prosecutors, and judges) in the context of organised crime.

## Background

Amid the wave of political changes in Eastern Europe in the late 1990s, Albania was the last country in communist Europe to break from the old regime and shift to Western democracy (Tarifa 1995; Biberaj 1998). Transition was complex and proved difficult for Albanian society. New legal and political concepts were not easy for the political elite to grasp (Austin and Ellison 2009). Rapid changes in constitutional rights and the decentralisation of institutional power created a chaotic social and political environment. In such a confused situation the formation of the political elite was a simple transformation of the existing elite (i.e. politburo members and the communist intellectual class) into new political structures (Vickers and Pettifer 1997). It was like communism playing to democratic rules. In practice the same networks and patterns of institutional control remained (Baze 2008).

Criminals, once frustrated by the harsh policies of the communist regime, could now prosper in a transitional Albania where state institutions were very weak (Cilluffo and Salmoiraghi 1999). The political elite and local criminals saw the political chaos as an opportune moment for exploitation and quick enrichment (Vickers and Pettifer 2007). As the market economy developed, many former public properties began to privatise. At the period (i.e. 1990-1999) a series of wars in the Former Republic of Yugoslavia (FRY) was taking place. The need for arms and commodity was emerging. In the North Albania shared border with the FRY. The political elite employed local criminals who gradually became organised to run its affairs. This is how the links between the political elite and organised crime started. Since then, although the political and economic context has varied over the years the judiciary was one of the most significant institutions to have given comfort to this relationship during the transition of 1990-2011.<sup>591</sup>

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<sup>591</sup> '...so today we have two main political parties (Democratic Party and Socialist Party) which in fact are two big oligarchies....they have been ripping off the resources of the country for the last 20 years... they have their own media...if you notice, when they get into power they use similar tools to keep the judiciary in control. First, they corrupt the elections and send signals to the judiciary to frighten the judges, second, they abuse the system with the psychology of submission of the judiciary to politics which seems to be something related to our political culture, third, both powers (executive and legislative) exert direct and indirect pressure on the judiciary and fourth, the judiciary itself is corrupted. So the judiciary is like a plant grown in a corrupt environment....judges too are compromised by the Mafia even without the involvement of politics.... and the fact that these judges are corrupt, captured also by organised crime and corrupt politicians, means that even the

As mentioned above, the patterns of interplay between organised crime and the political elite have changed, influenced by different social and political contexts. But, as my research shows, judicial corruption seems to have remained constant in its encouragement of this rapport. In this chapter, I will focus on the dynamic between organised crime and judicial corruption. Explaining this relationship will assist in the distillation of the theories offered in the next chapter and their contribution in explaining the causes and factors of judicial corruption in Albania.

## Definition of Albanian Organised Crime

My interviews suggest that there is uncertainty over what constitutes Mafia and what constitutes organised crime in Albanian society. The definition of Albanian organised crime (AOC)<sup>592</sup> as shown in Chapters 1 and 2 is also confused in the literature where even contemporary researchers of organised crime in post-communist Europe see parallels between AOC and the Italian Mafia (Stojarová 2007; Transcrime 2004; Holmes 2009).

It should be noted that the academic debate over the definition of organised crime is not exhausted (Levi 1998). Mainly influenced by American scholars, its definition has gone through different historical stages based on the contextual structures of organised crime in the US. Varese (2010) summarises the conceptual evolution of American organised crime in the last 100 years and states that there have been at least five main progressive structural stages: (1) Specialisation<sup>593</sup> (mid 1850s), (2) Hierarchy<sup>594</sup> (1950), (3) La Cosa Nostra/Italian-

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judiciary is part of this abuse of power by the state— the corruption...’ Interview with academic no. 3, 2010.

<sup>592</sup> I use AOC in those sections where I compare it with other OC groups active in the Western Balkans and the EU such as the Italian Mafia. In those sections where I focus on Albania I only use the term OC which refers to native organised crime groups. It is important to remember that there are also other non-indigenous yet very powerful types of OC that exploit Albanian territory, such as the Italian Mafia, Colombian Mafia, Balkan Mafia and Russian organised crime groups. For more see Zhilla, F. (2012) ‘Fatal Attraction: Foreign Criminal Networks in Albania’, *Jane’s Intelligence Review*, March, pp.44-48.

<sup>593</sup> Organised crime was perceived as a specialised entity which had ‘its own language; it has its own laws; its own history; its tradition and custom; its own method and techniques; its highly specialised machinery for attacks upon persons and property; its own highly specialised modes of defence’ (Varese 2010:3).

<sup>594</sup> Influenced by Donald Cressey (1967), one distinguishing element of organised crime was its hierarchical structure (Varese 2010:4).

American Mafia<sup>595</sup> (1963-69), (4) Enterprise<sup>596</sup> (1975-80), and (5) Networks and harm<sup>597</sup> (1990-2000) (Varese 2010:3-8).

The majority of my interviewed prosecutors suggested that the structure of AOC falls into the category of 'Networks'. A few prosecutors reported that 'AOC groups operate in small numbers, rely on family and friendship ties and do not have a typical hierarchical structure'.<sup>598</sup> As we will see in the following sections, only during 1997's civil unrest, when state power weakened significantly, did 'several organised crime groups consolidate around hierarchical structures'.<sup>599</sup> Some of the most typical organised crime groups pertaining to these categories were 'Banda e Lushnjes' (1997-2006),<sup>600</sup> 'Banda e Mandeles' (1995-99),<sup>601</sup> 'Banda e Tropojës' (1997-2001)<sup>602</sup> and a few organised crime groups operating in Vlora (Hoxha 2008:63-141).

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<sup>595</sup> This term had a political connotation where Italian gangsters were seen united for one criminal cause, La Cosa Nostra. They were considered by American authorities as a 'sinister organisation known as Mafia'. Later on the definition of La Cosa Nostra was depoliticised in academic circles and was equated with the crime syndicate (Varese 2010:5).

<sup>596</sup> While ethnic ties and conspiracy were considered significant features of organised crime, another definition which seems more market oriented becomes familiar – the 'enterprise'. Organised crime groups are seen as purely illegal 'large enterprises that exercise control over illegal markets'. The cooperation between organised crime groups is as among 'illegal entrepreneurs (often aided by corrupt police officers)... [they] remain independent illegal operators, [and do not] join a single (a few) structured, hierarchical organisations' (Varese 2010:6).

<sup>597</sup> 'Network' is a self-organising structure that is driven by the emergent behaviour of its parts' (Carlo Morseli quoted by Varese 2010:8). According to Varese (2010:8) this definition can be applicable to 'organisational systems ranging from simple co-offending to monopolising markets and territories, from one-time partnerships to membership in quasi-structured organisations, from ties based on family, to those based on friendship, background affinities, resource sharing and so on'.

<sup>598</sup> Interview with urban prosecutor no.3, 2010.

<sup>599</sup> '...within that climate of corruption, organised crime developed without rules. Why? The collapse of the state weakened the pressure of law enforcement agencies and thus organised crime groups mushroomed all over the country.....the 1997 period was the worst because they were armed, and formed their zones of influence...several organised crime groups consolidated around hierarchical structures..we had hierarchical groups such as "Gangs of Zani", "Gangs of Lushnja" or "Gangs of Gaxhai". They were more or less the classical forms of organised crime at the time...'Interview with urban prosecutor no.5, 2010.

<sup>600</sup> This was a very structured organised group mainly based on family and friendship ties. There is no exact number of its membership. The head of the group Alfred Shkurti, alias Aldo Bare, was a former police officer in the early 1990s. The group's structure was hierarchical: at the top was the leader; he had an advisor whom they called 'professor'; then there was someone taking care of the investment of criminal proceedings, and someone for committing the killings called the 'killer' (personal interview with urban prosecutor no.6, 2010; Hoxha 2008:110-122; Arsovska and Basha 2011:41).

<sup>601</sup> This organised crime group operated in the Midlands city of Elbasan, was composed of 40 members, all of whom were gypsies. The structure of the group was hierarchical, with the leader being Eduart Peqini, alias 'Mandela'; then a rank below were Peqini's four brothers, followed by their relatives and trusted friendship connections (Hoxha 2008:81).

In 1997-2001, AOC groups were also acting as Mafia groups as they were controlling the distribution of property rights and offering protection to domestic businesses and politicians.<sup>603</sup> My interviews suggest that the influence of organised crime on judicial corruption has been more evident during periods where state institutions have been weak<sup>604</sup> – something also emphasised in the literature (Van Dijk 2007).

Most of my interviewees note that from 2000 onward, 'AOC gradually shifted from hierarchical to a "Network" structure'.<sup>605</sup> The majority confirmed that most of the AOC groups presently operating in Albania have 'a simple structure, generally loyal to one leader, though on occasion, other members of the group take the leader's responsibilities'.<sup>606</sup> They are 'not well organised, act randomly and often are chaotic'.<sup>607</sup> Typical 'AOC membership varies from three to 15 people per group'.<sup>608</sup>

A few prosecutors told me that the structure of AOC is moving from family ties to friendship relations, and as one urban prosecutor explained, 'if we measure by percentage I think that those based on friendship connections are more'.<sup>609</sup> In stark contrast, the journalists interviewed contended that 'the majority of the groups today rely on family ties'.<sup>610</sup> I would argue that both statements stand as based on the assessment of the typologies of 'Banda e Lushnjes', 'Banda Tropojes' and 'Banda e Mandeles', the composition of these groups was a mixture of family and friendship ties. So I would argue that the characteristic of AOC is that their membership is based in both family and friendship ties.

My interviews also contradict some of the 'myths' about AOC developed in the literature which stress that AOC's source of strength and relationship lies in its reliance on 'strict codes of conduct' (Xhudo 1996; Stojarová 2007) or a 15<sup>th</sup> century code known as 'Kanun of Leke Dukagjini' (Holmes 2009:275). As one urban prosecutor told me, 'this is not true. ... taking into account the young age of AOC's membership (generally 25-40 years) they know little or nothing about Kanun'.<sup>611</sup> My data also suggest that the only elements that keep

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<sup>602</sup> 'Banda e Tropojes' operated in the North. It was based on close family ties and close relatives. Many of this group's recruits were state police – its leader Fatmir Haklaj was chief of Tropoja city's state police (Hoxha 2008:64-68).

<sup>603</sup> Interview with urban prosecutor no.4, 2010.

<sup>604</sup> '...the influence of organised crime on the judiciary was more open and more straightforward during 1997-98. It was characteristic of that period that a criminal would put a gun on the table of the judge's office and say, "here is the money and here is the gun, pick and choose"...' Interview with urban prosecutor no.2, 2010.

<sup>605</sup> Interview with urban prosecutor no.5, 2010.

<sup>606</sup> Interview with urban prosecutor no.4, 2010.

<sup>607</sup> Interview with urban prosecutor no.6, 2010.

<sup>608</sup> Interview with urban prosecutor no.1, 2010.

<sup>609</sup> Interview with urban prosecutor no.3, 2010.

<sup>610</sup> Interview with investigative journalist no.2, 2010.

<sup>611</sup> 'They do not have written honour codes, they simply follow the Albanian mentality...they feel that their family is threatened and then themselves..... taking into account the young age of AOC's

Albanian criminals together are “trust” among each other and “fear” of consequences for their family members or relatives’.<sup>612</sup>

Another element which is not mentioned in the literature so far is the ‘positive’ role of blood feud in terms of organised crime. So organised crime ‘will not attempt to hire individuals from those families which are under the regime of blood feud because then this will put the criminal group automatically in a turf with all the family members under the blood feud’.<sup>613</sup> However, there is a tendency of families in blood feud ‘these days to hire professional killers to do the killing and this is in violation of the Kanun which says that the killer should not hide but inform the family of the victim that he committed the crime.... this new trend has made the authors of blood feud killing very difficult to be traced today’.<sup>614</sup>

Turning to the definition, most of the journalists and advocates interviewed applied the term ‘Mafia’ to those criminal groups that are entrenched in the political elite and legitimate powerful businesses. For the majority of interviewees the distinct element of the Albanian Mafia is not what the literature suggests, such as the provision of criminal protection or control of property rights, but, ‘rather, close ties with the legislature, executive, judiciary and business’.<sup>615</sup> But those ties do not distinguish them as Mafia but ‘their criminal activities blended with legal business outsourced by corrupt politicians such as exploitation of mines or the scrap business’.<sup>616</sup>

This perception of Albanian Mafia among this category of interviewees,<sup>617</sup> and society at large, is influenced by the Italian media and cinema (Hoxha 2008:198). Popular perceptions

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membership (generally 25-40 years) they know little or nothing about Kanun, so they do not use such terms. They use banal expressions like, “we will kill your parents, destroy the family” and so forth. This is not Kanun. They do not know about it. They do not even know the rules of “Besa”...’ Interview with urban prosecutor no.3, 2010.

<sup>612</sup> Interview with rural prosecutor no.4, 2010.

<sup>613</sup> ‘...organised crime will not attempt to hire individuals from those families which are under the threat of blood feud because, then, this would put the criminal group automatically in the same position as all the family members under the blood feud...vengeance is based on individual reports, not in relation to the group as a whole...’Interview with rural prosecutor no.3, 2010. However, one investigative journalist pointed out that: ‘...there are organised crime groups which were formed because one member of the family entered into a blood feud, and, to protect themselves they started to organise, steal and kidnap...this is how they secured their living... gradually these groups moved to more serious crimes such as human and drug trafficking...’Interview with investigative journalist no.2, 2010.

<sup>614</sup> Interview with rural advocate no.2, 2010.

<sup>615</sup> ‘...for me, the difference between organised crime and the Mafia is that in Mafia groups there are powerful people coming from politics, and here I mean people coming from parliament, the judiciary and particularly from the executive. So people who have close ties with the legislature, executive, judiciary and business...join criminal organisations while still keeping their public functions.... this is the Mafia....’ Interview with urban advocate no.4, 2010.

<sup>616</sup> Hoxhaj, E. (2012) ‘The stealing of scrap, the new “drug” of Albanian mafia’ (Vjedhja e skrapit, droga e re e mafies shqiptare), *Shqiptare Gazette*, April 30.

<sup>617</sup> Interview with urban advocate no.4, 2010.

of the Mafia are similar to patterns of the notorious Sicilian Mafia 'Cosa Nostra'. According to most journalists and advocates interviewed, Albania has two forms of organised crime: (1) organised crime groups and (2) the 'Mafia-like groups'. In general, the journalists and advocates thought of the Mafia as the highest level of organised crime. A few of them highlighted that what we frequently think of as organised crime groups in Albania are, in fact, those who appear violent in the public eye, but in reality the Mafia-like groups are those integrated in the economy and politics – they are hidden behind legal business and have strong links with political elites. And as one advocate put it, 'They never go to court or prison'. According to most of my interviewees the Mafia-like organised crime is a real threat to society, because 'they can influence the law-making and undermine democracy'.<sup>618</sup>

Interviewed prosecutors and judges, those dealing specifically with serious organised crime, had a clearer perception of AOC groups. For them, AOC displays similar patterns to the Italian Mafia groups but it is not the same. From the criminological perspective, they categorised them in old and new forms. At least one of the interviewed judges noted that 'at the moment [2010] there are two typical typologies of organised crime groups in Albania'.<sup>619</sup>

The first one is a leftover of 1997's criminal groups, such as 'Banda e Lushnjes', which were dismantled in 2001 because of the strong intervention of the state. Some members of this group went to prison and some of them emigrated to the EU where they continued their criminal activities. After a while in the EU, some of them began to invest their illicit profits back home and to revitalise their old links to the country. The second typology includes those groups that emerged after 2001 who use special methods of cooperation and whose criminal activity is specific. Their main criminal activities are women trafficking and the smuggling of narcotics and arms.<sup>620</sup> Some judges and prosecutors assumed that there are powerful criminal rings which have close links with high profile politicians and which run consolidated businesses, but they also highlighted that 'there is lack of clear evidence of this and that everything is based on rumour and assumption'.<sup>621</sup>

The perception among Albanian people in general is similar to that of my interviewed journalists and advocates (Hoxha 2008:198). However, the perception among all categories (prosecutors, judges, journalists, advocates) is consistent in that there are two types of organised crime group in Albania and that the 'Mafia-like' groups are the most sophisticated form of organised crime. This perception, in fact, does not contradict the

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<sup>618</sup> 'They can influence the law-making and undermine democracy. The Mafia today does not kill anyone. Why not, when they killed before? It's because the Mafia is becoming rich, not through murdering people anymore, but through the preparation of legislation. Through laws, the Mafia is getting rich in a "legitimate" way, and it makes millions. For me the Mafia is inside the state. Who makes the laws? It is the parliament. Since this parliament contains criminals they vote for laws and elect the government, the General Prosecutor and judges of the High Court and Constitutional Court. So the state is finished.' Interview with urban advocate no.3, 2010.

<sup>619</sup> Interview with urban judge no.4, 2010.

<sup>620</sup> Interview with urban prosecutor no.3, 2010.

<sup>621</sup> Interview with urban prosecutor no.4, 2010.

modern definition of the Mafia. According to Varese (2010:17), 'a Mafia group is a type of OCG [organised crime group] that attempts to control the supply of protection... and the scope of a Mafia group is much wider than that of an OCG, since it aspires to protect any transaction...in a given domain'. However, my data suggest that even the first form of organised crime exhibited mafia-style patterns during the local elections in 2011 when local organised crime groups provided informal protection of the ballots and influenced the distribution of voting rights for the political parties that hired them (Zhilla 2011).

My interviews suggest that AOC groups are different from the Italian Mafia. According to Albanian experts and many of my interviewed prosecutors and judges, 'AOC may have nuances of Italian Mafia families such as reliance on family ties or customary norms and be violent but they are different from the Italian Mafia family structures'<sup>622</sup> (Hoxha 2008:197). According to interviewees, there 'have never been traditional classical Italian Mafia-like families rooted in Albania'.<sup>623</sup>

For the above reasons, in this chapter, I will use another definition for AOC and avoid the term Mafia, as the typology of AOC does not quite fit with the typologies of classical Mafia groups such as the Sicilian Mafia, Cosa Nostra, the Hong Kong Triads, the Russian Mafia and the Japanese Yakuza. The AOC groups do not share 'similar rituals and rules...of a collective entity of which they are a part', as the above-mentioned Mafia groups do (Varese 2010:17). One of the main reasons is that the Italian Mafia's complex codes and rituals have 'so far not proved to be either exportable or credible beyond the boundaries of its original communities' (Paoli 2003:12).

Having described my interviewees' perceptions of the definition of AOC, I now turn to the categories of organised crime in Albania. As my research shows, they use different patterns to influence the judiciary and for this reason it is important to elucidate the distinctions between different structures of AOC.

## Contextual Categorisation of Organised Crime Groups

During 1990-96, in the early period of post-communist transition, organised crime developed very quickly. Gradually, two forms of organised crime emerged. The first had a low profile and this category always remained in the realm of criminal activity and low level of criminal culture and never moved up in the hierarchy of society. I will define this form as

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<sup>622</sup> Interview with urban prosecutor no.3, 2010.

<sup>623</sup> 'It is a little difficult to give an absolute definition of Albanian organised crime because the structure of organised crime groups changes from year to year. This means that here we do not have and, in fact, never have had traditional classical Italian Mafia-like families rooted in Albania. The structure and functioning of Albanian organised groups is totally different...' Interview with urban prosecutor no.1, 2010.



Low Profile Organised Crime (LPOC). This is, in effect, what the majority of my interviewees define as organised crime. The LPOC groups resemble more the Italian Camorra<sup>624</sup> of the late 1990s or are similar to Varese's definition of the 'Networks and harm' mentioned above whereby they are often focused on only one or two criminal activities. They act quite independently from the executive, legislature and judiciary in the sense that 'their interaction with politicians and judges only begins when they are arrested and detained by law enforcement agencies where they want to facilitate their criminal activities'.<sup>625</sup> Therefore LPOC does not rely much on political support for its criminal plans and activity (Saviano 2007).

So, the LPOC does not have a hierarchical structure, operates in small groups and is very flexible.<sup>626</sup> Its links with the judiciary and political elite are sporadic and not permanent.<sup>627</sup> The most obvious connection between organised crime and the political elite occurs during general elections when this category of organised crime becomes very active in 'protecting the ballots and collecting votes for the candidate of the political party they support in their local domain'.<sup>628</sup> In exchange for this 'service', LPOC only resorts to local governors or Members of Parliament for access to courts where the mechanism of bribery has not worked. My interviewees suggest that because judicial corruption is systemic, the LPOC's need for political support to influence the judiciary is minimised,<sup>629</sup> something which has decreased the cost of the role of politics in the interplay between LPOC and judicial corruption.

The second category of organised crime is more sophisticated and is integrated in business and politics.<sup>630</sup> I will define it as High Profile Organised Crime (HPOC). This category is similar to that which the Albanian public and many of my interviewees perceive as Mafia. Similarly to Sicilian Mafia groups, HPOC is more 'sophisticated and has close links with the political elite'<sup>631</sup> (Paoli 2003). They resemble more Varese's (2010) 'Enterprise' definition, as one of their prime interests is legal economic enrichment via violent patterns. So they

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<sup>624</sup> For the modern structure of the Italian Camorra see Saviano (2007:45).

<sup>625</sup> Interview with urban advocate no.3, 2010.

<sup>626</sup> Interview with urban prosecutor no.4, 2010.

<sup>627</sup> Interview with urban prosecutor no.1, 2010.

<sup>628</sup> '...political and local elections are one of the most visible indicators of the connection between organised crime and the political elite. Criminals are involved in protecting the ballots and collecting votes for the candidate of the political party they support in their local domain. In the 2009 political elections, the system changed (regional proportional), giving more power to the leader of the political party. However, even with the new election system, the impact was greater, because criminal groups actively engaged in raising funds and the collection of votes by the use of force. When they are collecting money for a political power, the leader of that party is forced to cooperate with organised crime on what the candidate puts in the election manifesto because organised crime groups will not finance someone who is not going to win. It is not guaranteed afterwards...' Interview with investigative journalist no.2, 2010.

<sup>629</sup> Interview with urban advocate no.2, 2010.

<sup>630</sup> Interview with investigative journalist no.3, 2010.

<sup>631</sup> Interview with urban advocate no.4, 2010.

can use 'violence and blackmail in addition to bribery to get access to public goods'<sup>632</sup> (Santino 2002). They have strong connections with senior judges. Sometimes it is difficult to 'distinguish them from legal businessmen or elected politicians'.<sup>633</sup> In contrast to LPOC, they 'behave in public as law abiding citizens'.<sup>634</sup>

My interviews highlight that LPOC is more exposed to law enforcement agencies and is engaged in conventional crimes, whereas HPOC, in addition to its criminal activities, is hidden behind political outfits and legal businesses.<sup>635</sup> HPOC is often the link between LPOC and high profile politicians during both general and local elections.<sup>636</sup> They have both the financial resources and the right connections, which enables them to produce politics and laws in their favour by way of influencing the election of targeted politicians in parliament and by having direct relations with high profile judges, prosecutors and state police<sup>637</sup> (Santino 2003:87).

My data also suggest that the main distinguishing characteristics between the two forms are:

First, continuity and reliance on the political elite. The LPOC generally act independently and the interplay with judicial corruption and political elite is seasonal (e.g. protection of ballot votes during general and local elections), whereas, HPOC's connection with judges and politics is permanent. In this sense LPOC does not need to 'hire' any particular judge but simply uses bribery or blackmail when its members go to court. By contrast, HPOC has established contacts with high profile judges, prosecutors, state police and politicians who can exert their influence to solve HPOC's disputes with state agencies or their adversaries.

My interviewed advocates and investigative journalists pointed out that the influence of HPOC is on 'the law and policy making and this requires it to invest in the election of politicians and promotion of judges, state police and prosecutors'.<sup>638</sup> As mentioned earlier its main interest is business and it acts as a business venture, often relying on criminal methods (e.g. extortion, bribery, life threats or blackmail) in doing business<sup>639</sup> (Santino 2003:85).

The second distinguishing feature between the two forms concerns the ratio between legal and illegal business. LPOC relies more on illegal business because, as one interviewed prosecutor put it, 'they are not able to do legal business'.<sup>640</sup> For HPOC groups, the size of

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<sup>632</sup> Interview with investigative journalist no.2, 2010.

<sup>633</sup> Interview with investigative journalist no.1, 2010.

<sup>634</sup> Interview with investigative journalist no.3, 2010.

<sup>635</sup> Interview with urban advocate no.3, 2010.

<sup>636</sup> Interview with investigative journalist no.3, 2010.

<sup>637</sup> Interview with investigative journalist no.2, 2010.

<sup>638</sup> Interview with urban advocate no.2, 2010.

<sup>639</sup> Interview with investigative journalist no.2, 2010.

<sup>640</sup> '...they are more engaged in criminal activities because they do not know how to do legal business. The most that they might do is open a coffee bar which they would mostly use as a meeting place. They cannot run a proper business and be successful. One of the characteristics of

their formal business can be larger than the size of informal activities. The blurring of activities makes HPOC more difficult to be investigated<sup>641</sup> (Saviano 2007).

Third, the relationship dynamic between the political elite and the judiciary is also different. While the heads and members of LPOC usually derive from former gangs and generally have not worked in public institutions, by contrast the heads or members of HPOC are generally individuals who were 'formerly public officials holding various positions such as members of state police, the secret service, bodyguards of high profile politicians and customs officers'<sup>642</sup> (Hoxha 2008:185). In the early period of transition, using their official power they were able to access formal and informal markets and establish contacts with corrupt judges, criminals and informal business. This helped them to accumulate considerable financial resources and sensitive information. Gradually some of them joined politics and business, or both, and a few of them became 'members of the legislature or executive during 2000-10'.<sup>643</sup>

It is difficult however, to draw a line between both forms as occasionally HPOC may act as LPOC or vice versa. During the transition period many groups upgraded from LPOC to HPOC; some of the LPOC were imprisoned in 2005; new LPOC emerged in 2005-11; some LPOC and HPOC may have withdrawn from illegal activities and converted to small or consolidated legal businesses.<sup>644</sup> However, I will use these definitions throughout this chapter to distinguish and elucidate patterns of interplay between organised crime and judicial corruption.

Having explained the distinguishing features of the different categories of organised crime group in Albania I will now turn to explain its dynamic during the last two decades. As explained above, I have divided the development of the interplay between organised crime and judicial corruption into two main stages: the 'post-communist transition' phase and the 'sophistication' phase.

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Albanian organised crime is that they are not capable of carrying out a business which requires a daily routine, work which would require them to manage a business...' Interview with urban prosecutor no.1, 2010.

<sup>641</sup> Interview with urban prosecutor no.3, 2010.

<sup>642</sup> Interview with investigative journalist no.2, 2010.

<sup>643</sup> Interview with investigative journalist no.2, 2010.

<sup>644</sup> Interview with urban prosecutor no.3, 2010.

# The Post-Communist Transition Phase (1990-99)

## Main Factors

Albanian local organised crime emerged during the country's transition to democracy. There were many factors and historical moments which opened opportunities for organised crime to exploit the economy during 1990-93. The early 1990s was the period when illegal markets flourished all over the Western Balkans and when transnational organised crime began to emerge (Antonopoulos 2008). At this time, the role of the state in Albania was almost absent and this enabled local gangs to flourish. The structure of state police was in chaos and this generated fear and lack of confidence among law enforcement agencies (Vickers and Pettifer 1997:129). The economy disintegrated and unemployment soared. Robbery and rape were common in almost every Albanian city (ibid:128).

The historical changes and wars commencing in the Western Balkans in that period also played a significant role in boosting political corruption and nurturing organised crime.<sup>645</sup> Albania's transition to democracy occurred while the Former Republic of Yugoslavia (FRY) was at civil war and while Slobodan Milosevic initiated an ethnic cleansing of non-Serbs there. In 1992, the United Nations (UN) imposed sanctions on FRY, which resulted in increased opportunities for trans-border criminal activity in the Western Balkans (Krastev 2002:46).

Sharing a land border with FRY, Albania was a very opportune path for organised crime and the political elite to break the embargo and smuggle fuel and other commodities in high demand to FRY's army (Glenny 2008:39). During 1993-94, the estimated profits from oil trafficking to FRY were US\$1 million per day (ibid:44). The Albanian democratic state was in its infancy and its institutional structures very weak. There was little separation of powers and control of the political elite over the judiciary was evident (Zogaj 2009:44).

A regionalism in organised crime began to take shape. In 1992, to circumvent international supervision, Albanian politicians employed local gangs to manage and control their criminal activities (Hoxha 2008:185). During the UN embargo, local gangs in northern Albania, on the border with Kosovo and Montenegro (then parts of FRY) became engaged in oil trafficking. In this period they were strongly attached to the Democratic Party (DP), then in power. As Neritan Ceka, leader of the Democratic Alliance, a party in opposition to the democrat-headed government at that time, declared: 'the most worrying precedent now is the link between the government and the Mafia, particularly around Shkoder [a main city of northern Albania], which is breaking the UN sanctions against Yugoslavia' (cited in Vickers and Pettifer 1997:249).

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<sup>645</sup> See United Nations Office on Drugs and Crime (2008) 'Crime and its Impact on the Balkans and Affected Countries', March.

In the South, other criminal activities emerged such as human and drug trafficking and the stealing of antiquities (Vickers and Pettifer 1997:134). It is believed that many of the organised crime groups in southern Albania had close links with socialists via members of the former communist secret service, then 'Sigurimi', who escaped to Greece while the old regime was toppling (ibid:134).

This regionalism in organised crime was boosted during the 1997 civil unrest when the political elite attempted to divert public attention away from the real crisis by portraying the quasi civil war as a war between North and South. Many local organised crime groups were involved in this political scenario (Zogaj 2009:257). During this period, it was very difficult to distinguish between an armed local political supporter and a local organised criminal group. In summer 1997, the DP, via the secret service, then 'SHIK', supplied around 4,000 firearms to its political supporters in the surrounding cities in the Midlands and North. A group of 200-300 loyalists from the North were guarding Sali Berisha, the then President, inside his compound (ibid:260).

During 1990-95, organised crime was largely composed of criminals imprisoned during the communist period but released early as the communist regime collapsed in 1990 (Hoxha 2008:184; Vickers and Pettifer 1997:129). An amnesty freed all those individuals sentenced for non-political crimes (e.g. robbery, theft, fraud) during the communist regime. In 1988, the ratio of those sentenced for political reasons to those imprisoned for non-political crimes was 1 to 54 (Bezhani 2003:51).

The change of political system was another significant factor in the rapid development of judicial corruption and organised crime.<sup>646</sup> The transition from a centralised to free market economy opened enormous opportunities for corrupt officials to undermine the privatisation process and capitalise formerly state-owned properties for private gain.<sup>647</sup> Privatisation was a target of organised crime as was the banking system too. Many loans were given and have still not been repaid to banks (Hoxha 2008:184).

Control over foreign aid was another link between the political elite and organised crime. To smooth Albania's transition to democracy, the international community offered a package of emergency aid worth \$150 million in the early 1990s (Vickers and Pettifer 1997:72). The Italian government was in charge of administering and transporting the aid to Albania (Tripodi 2002). Many local organised crime groups with strong ties to local politicians were involved in stealing this foreign aid and selling it on the black market (Vickers and Pettifer 1997:135).

This corruption was revealed in 1990, and the socialist-led government was accused by the opposition of Mafia-type links with Italian leftists in exploiting the foreign aid and diverting it for illegal profit (Polovina 2003:78). This is the period when the patterns of political corruption of the Western political parties, particularly the Italian ones, were transfused into the Albanian political elite (Ruggiero 2000:116-117).

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<sup>646</sup> Interview with urban prosecutor no.4, 2010.

<sup>647</sup> Interview with urban advocate no.4, 2010.

Albania's chaotic land reform, which persists to this day,<sup>648</sup> was another determinant in the perpetration of corruption and organised crime in the judiciary. The majority of my interviews indicate that one of the main factors generating judicial corruption in Albania is 'cases related to property disputes'.<sup>649</sup> A disrupted and inconsistent land reform has created an overlapping of ownerships over properties, which has inflicted a rough division in society and increased criminality (Bardhoshi 2011; Lemel 1998). It is estimated that in 20 years of transition around 8,000 people have been killed over property issues.<sup>650</sup> My interviews suggest that while other violent crimes have fallen significantly, 'the scale of crimes related to property disputes remains high'.<sup>651</sup> In September 2011, one judge of the first instance court of Vlora, Skerdilajd Konomi, was killed by a remote-controlled bomb placed under his car. Konomi's family claims that the real motive behind his assassination is related to their property located in a strategic coastal area, which was recognised to them by a High Court decision in 2011.<sup>652</sup>

In 1993-96 corruption in public administration, including the judiciary, became a serious problem.<sup>653</sup> During this period, an informal relationship of control was established between the political elite and public employees. Nepotism was widespread among ministers. This pattern of appointments was transfused to almost all public institutions and the justice system (Vickers and Pettifer 1997:244-245). Senior officials would 'turn a blind eye to the criminal activities of their subordinates unless they were exposed in public'.<sup>654</sup> In turn, public officials were asked to support the governing political elite during elections.<sup>655</sup> Public institutions became instruments in the hands of politicians for close interests.

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<sup>648</sup> See European Commission (2011) 'Albania 2011 Progress Report', Commission Staff Working Paper, October 12, p.19; available at <https://mail.google.com/mail/?shva=1#inbox/133b6822496f76b0> [accessed December 6, 2011].

<sup>649</sup> 'Albania has a huge problem with the issue of property disputes, because they involve a lot of corruption. I can say with full confidence that property cases are the most corrupt cases in the courts. Bribes paid for these cases are really hard to bear for the claimants because the property trials can last for years and people have to continue to pay bribes the whole time... a large number of property issues in the capital city Tirana have been solved, while a great many are still blown away by the "Strong" people (criminals), and the VIP. In these cases the trial is a lost cause, everyone knows that.' Interview with investigative journalist no.1, 2010.

<sup>650</sup> Stefani Andrea (2010) 'Properties blighting the transition' (Pronat pergjakin tranzicionin), *Shqiptare Gazette*, October 29.

<sup>651</sup> Personal interview with urban prosecutor no.2, 2010.

<sup>652</sup> See the open letter by Konomi's family made public in the media: *Shqip Gazette* (2011) 'Skerdilajt Konomi's family: This country is ruled by Mafia' (Familja e Skerdilajt Konomit: Ne kete vend mbreteron mafia), November 23.

<sup>653</sup> Interview with rural advocate no.1, 2010.

<sup>654</sup> Interview with academic no.3, Tirana, 2010.

<sup>655</sup> 'During elections in the early transition (1993-97) we were often asked by our chief of police, who himself received orders from high profile officials in the Ministry of Interior, to make sure that we all cast our votes for the party in power, and persuade people we knew to do the same. The chief of police would speak openly to us and say that we should do everything to secure the win...' Interview with former state policeman no.1, 2011. Patterns of the politicisation of state police

This was the period when public employees in the criminal justice system exploited their position for criminal gain.<sup>656</sup> Many key public officials in the fight against organised crime, such as state police, were also members of or cooperating with organised crime.<sup>657</sup> They were involved in various crimes such as human trafficking and document forgery.<sup>658</sup> There were occasions when even local chief state police were involved in racketeering. Today some of them are successful businessmen in the construction industry.<sup>659</sup>

Having shown the socio-political factors that gave rise to organised crime during the transition, I now focus more on its interplay with judicial corruption. My data suggest that organised crime has used various patterns to influence the judiciary.

The Center for the Study of Democracy (CSD) (2010:34), based on the work of Buscaglia and Van Dijk (2003), lists five ways in which organised crime often accesses public institutions including courts: '(1) sporadic, or low-level, bribery; (2) regular, meaning low-ranking officials on an organised crime payroll; (3) infiltration of managerial domains; (4) compromised heads of agencies; and (5) capture of state-policies'.

However, the use of political channels to compromise the judiciary and the influence on law-making are missing from this list. My data suggest that these forms of influences have been the most evident tools used by organised crime and political elite to corrupt the judiciary. In the following sections I will show how all these mechanisms have been exploited interchangeably by organised crime to penetrate public institutions and influence the courts.

### **Judicial Corruption, the Political Elite and Organised Crime**

As mentioned in Chapter 4, political control over the judiciary increased and nomination of judges became highly politicised in 1992-96. Telephone justice was common.<sup>660</sup> In this period the Albanian government initiated several legal reforms to purge the judiciary, prosecution and state police of former communist remnants.<sup>661</sup> This was the phase when

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during elections (local and political) have remained the same. During an informal conversation with a high profile police officer in 2012, he said 'I told my staff that they had to make the right choice when casting their vote (meaning they should vote for the democrats) if they wanted to keep their job...this is how it works here ....even socialists have done the same...this is the system whether you like it or not...'Interview with former state policeman no.2, 2011.

<sup>656</sup> Interview with a former investigative state policeman, 2011.

<sup>657</sup> Interview with investigative journalist no.2, 2010.

<sup>658</sup> Interview with a former investigative state policeman, 2011.

<sup>659</sup> Interview with investigative journalist no.1, 2010; investigative state policeman, 2011.

<sup>660</sup> Interview with investigative journalist no.2, 2010.

<sup>661</sup> Interview with academic no.1, 2010.

the level of professionalism in the judiciary and prosecution dropped and its politicisation increased (Vickers and Pettifer 1997:246; Bezhani 2003:61-75).

The judiciary was highly corrupt and criminals' access to the courts was straightforward.<sup>662</sup> As Zogaj (2009:216) notes, for that period 'our corrupted judges...complained all the time that they were not protected in the fight against criminals. In this way, they ensured an alibi [which allowed them] to play politics with the criminal justice policies. The politics of criminal justice is paid. Judges not only live but live very well, while criminals continue to kill...'

The judiciary was used as a weapon to weaken political adversaries.<sup>663</sup> As a result, the former prime minister and then leader of the Socialist Party, Fatos Nano, together with the then vice minister of foreign affairs, Sokrat Plaka, were arrested and charged with corruption and abuse of foreign aid on July 30, 1993 (Polovina 2003:79; Vickers and Pettifer 1997:240). The process was perceived by the public as highly politicised, and as Vickers and Pettifer (1997:253) put it: 'the consideration of evidence [in Nano's process] was of a diminishing importance in the judicial process, where the over-riding factor was that the government required the opposition leader to be convicted'.

Although the legal system was different from the communist past, patterns of political control over the judiciary were the same (Vickers and Pettifer 1997:245). The Secret Service, then 'SHIK', was used randomly by the executive to blackmail judges, public officials and political adversaries.<sup>664</sup> According to the Albanian media, in 1994 one of the judges, Arben Ristani, who acquitted two journalists known for opposing the executive, then governed by democrats, was later set up by SHIK and was arrested in 1994 to subsequently be released on bail. Strangely enough, in 2009, the same judge was selected and appointed by democrats headed by the same leader, Sali Berisha, as chairman of the Central Election Commission (i.e. the institution in charge of managing the elections and validating the results). Ristani was accused by the opposition of open bias toward democrats and of having direct influence on the politicisation of the administration of the 2010 local elections.<sup>665</sup>

In 1995 the Chief Judge of the Court of Cassation, Zef Brozi, was dismissed by President Berisha because Brozi denounced the failure of key institutions dealing with crime such as the Ministry of Internal affairs, the Albanian Prosecution Service, the Prosecution Office of Tirana, the First Instance Court and the Appeal Court, and accused them of participating in a 'system of manipulating and falsifying evidences' (Zogaj 2009:61-64). Judge Brozi also opposed many of the government's policies regarding judicial dismissals, politicisation of the courts' decisions, mishandling of human rights and the proposed procedures for approving the new constitution (Vickers and Pettifer 1997:271). The discharge of the Chief Justice was perceived by the international community as highly politicised, leading President Clinton to cancel the \$3 million of US aid allocated for the training of judges,

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<sup>662</sup> Interview with rural judge no.2, 2010.

<sup>663</sup> Interview with rural prosecutor no.4, 2010.

<sup>664</sup> Interview with academic no.2, 2011.

<sup>665</sup> *Tema Gazette* (2011) 'The secret past of Arben Ristani' (E shkuara sekrete e Arben Ristanit), May 11.



prosecutors and police (Tripodi 2002:92). In addition, almost all General Prosecutors from 1992 to 2008 have been dismissed by the executive for political reasons and some of them have successfully won their cases in the Constitutional Court<sup>666</sup> (Zogaj 2009:44; Moisiu 2009:277).

In 1997, a series of pyramid schemes mushroomed in most criminalised cities, such as Vlora and Tirana. This is the period when almost all the investments of Albanians, including judges, were criminalised. Around 500,000 to 600,000 people or around 25% of Albanian families invested their savings, mainly collected from the remittances of Albanian refugees working in Greece and Italy (Zogaj 2009:283). The amount estimated to have been invested in these schemes was around US\$1-1.5 billion (Miletich 2000:72). The political elite and organised crime also invested in these ventures. Bosses of these schemes had strong ties with the government (Zogaj 2009:276).<sup>667</sup> In March 1997 the main pyramid schemes collapsed, sending the country into chaos and a near civil war. Almost 2,000 people were killed and over 10,000 wounded (Jarvis 2000:1; Zogaj 2009:236; Hoxha 2008:133).

During this time organised crime consolidated into hierarchical structures.<sup>668</sup> In those cities where a criminal subculture was more developed, different organised crime groups infiltrated their people into all key local governmental institutions (Hoxha 2008:96). This gave them access to information and in time increased the opportunity to circumvent state control (Hoxha 2008:96). Many powerful organised crime groups were controlling the appointment of prosecutors, judges and high profile state police. By early January 1998, the chief of state police in the city of Gjirokastra was changed eight times, 'which meant that the law was dictated by the regional mafia' (Baze 2008:44).

Parallel and informal structures of organised crime were competing with state institutions for control.<sup>669</sup> In several cities, including the capital Tirana, powerful organised crime groups imitated state police and opened their own 'police stations'.<sup>670</sup> They used similar ranks to the state police and army and applied comparable hierarchical structures.<sup>671</sup> During this period organised crime had access to the judiciary without the help of politicians, and direct links between local criminal and corrupt judges were established.<sup>672</sup>

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<sup>666</sup> Interview with urban advocate no.5, 2010.

<sup>667</sup> 'We often saw a pyramid schemes manager passing through our border to Macedonia. She travelled in a very luxurious car, a kind of limousine, escorted by professional security guards as if she was the President of Republic and we didn't check her...her team were equipped with more modern security equipment than the state police...we were told by high profile politicians not to hassle her or her people.. we didn't dare...but what also struck me at the time was that even at the neighbouring Macedonian border the police did the same...nobody checked her, she was untouchable...' Interview with former state policeman no.1.

<sup>668</sup> Interview with urban prosecutor no.5, 2010.

<sup>669</sup> Interview with urban judge no.2, 2010.

<sup>670</sup> Interview with investigative journalist no.1, 2010.

<sup>671</sup> Interview with investigative journalist no.3, 2010.

<sup>672</sup> Interview with rural judge no.1, 2010.

The judiciary was 'left unprotected and vulnerable to organised crime'.<sup>673</sup> As mentioned in Chapter 4, several courts were burned and documents destroyed.<sup>674</sup> Judges, especially in rural areas, were 'threatened constantly by local organised crime'.<sup>675</sup> In March 1997, one of the state police officers describing the situation of organised crime groups in the city of Lushnja noted that 'they [criminals] challenge the state openly. ... threaten state police and people working for the criminal justice sector' (cited in Hoxha 2008:107).

## Sophistication Phase (2001-12)

By 1999, the judiciary remained a weapon in the hands of politicians and continued to be exploited for political reasons and criminal ends.<sup>676</sup> As mentioned earlier, immediately after 1998 when socialists came to power they began to purge the judiciary of democrat 'loyalists'. All court cases involving former communist politburo members, including the wife of dictator Enver Hoxha and the last leader of the communist government Ramiz Alia, were closed and the majority of the presiding judges in these cases removed. Five high-profile politicians, holding key positions during the democrats' governance in 1997, were accused of genocide and crimes against humanity for the events of that year (Baze 2008). It appeared that socialists used the same patterns of blackmailing the opposition through the misuse of the prosecution office and the judiciary. They did not condemn any of the accused and the process was 'allegedly "frozen" in the court by the socialists themselves'.<sup>677</sup>

The nexus between the political elite and organised crime became gradually more sophisticated. In parliament in November 2004, Nikolle Lesi, a member of parliament and the head of one of the most influential newspapers *Koha Jone* during 1996-2004, read extracts from a transcript of an alleged tape recording made by an Albanian investigator of a secret meeting between the then Prime Minister, Fatos Nano and the Parliamentary Head of the Legal Commission, Fehmi Abdiu in December 1997. This affair became known as the 'Albanian Watergate'.<sup>678</sup> According to that transcript, both Nano and Abdiu discussed the possibility of softening the criminal law on offences pertaining to arms and drug trafficking.<sup>679</sup>

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<sup>673</sup> Interview with urban judge no.7, 2010.

<sup>674</sup> Interview with urban judge no.8, 2010.

<sup>675</sup> Interview with rural judge no.7, 2010.

<sup>676</sup> Interview with academic no.3, 2010.

<sup>677</sup> Interview with urban advocate no.7, 2010.

<sup>678</sup> Personal interview with investigative journalist no.3, 2010.

<sup>679</sup> *Korrieri Gazette* (2004) 'Nano in the trafficking of arms' (Nano ne trafikun e armeve), November 9.

Referring to the transcript, Nano promised to promote all key actors willing to participate in the scheme such as Abdiu and the then Minister of Justice, Thimio Kondi. It may be coincidence, but Abdiu was later promoted to Chief Judge of the Constitutional Court and Kondi to Chief Justice of the High Court. Both Nano and Abdiu denied the accusations. The then Prosecutor General, Theodhori Sollaku, who in 2011 was elected as a member of the National Assembly of the Socialist Party,<sup>680</sup> considered the evidence seriously tampered with and not sufficient for further investigation of the Prime Minister.<sup>681</sup> Nano asked parliament to lift the immunity of deputy Lesi and accused him of libel. However, his request was voted down by parliament.<sup>682</sup>

The source of this information was Sokol Kociu, who at the time of the recording worked as chief of police in the district of Kucove and later on as a prosecutor at the Albanian Prosecution. In 2001 Kociu was accused and found guilty of drug trafficking and of being a member of an international organised crime group, commonly known in the media as the 'Cocaine Group'. Kociu denied the accusations and considered them politicised and linked to the recording.<sup>683</sup> After ten years in prison he successfully sued the Albanian government in the European Court of Human Rights (ECHR) for compensation in 2010.<sup>684</sup>

An interesting point to note is that at least one prosecutor I interviewed said that the 'recording was politically motivated and that this was a political scenario to weaken the General Prosecutor's Office and the then Prime Minister Nano'.<sup>685</sup> In stark contrast, at least one advocate and a journalist emphasised that 'the recording was real but the transcript read by Lesi in parliament had been tampered with for political purposes'.<sup>686</sup> However, according to one interviewed journalist, those parts of the discussion where Nano and Abdiu spoke about the amendment of the criminal law were true. Lenient legislation against arms and drug trafficking would pave the way for organised crime to prosper in the years to come.<sup>687</sup> By 1997 AOC groups were involved in the Balkan route of such trafficking and many were gradually expanding their territory overseas, but their links with Albanian politicians remained (Ruggiero 2000:58-60).

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<sup>680</sup> *Panorama Gazette* (2011) 'The Assembly of SP, the counting of votes closes' (Asambleja e PS-s, perfundon numerimi i votave), November 9.

<sup>681</sup> *Metropol Gazette* (2005) 'Sollaku, nothing true in the file of "Lesi"' (Sollaku asgje e vertete ne dosjen 'Lesi'), April 14.

<sup>682</sup> See US Department of State (2005) 'Human Rights Report, Albania', Bureau of Democracy, Human Rights, and Labor, February 24; available at <http://www.state.gov/g/drl/rls/hrrpt/2004/41666.htm> [accessed December 2, 2011].

<sup>683</sup> Personal interview with urban advocate no.6, 2010.

<sup>684</sup> See Lala, K. (2010) 'Sokol Kociu, my life in a cell with Dritan Dajti' (Sokol Kociu, jeta ime ne qeli me Dritan Dajtin), *Shqiptare Gazette*, September 23.

<sup>685</sup> Interview with urban prosecutor no.5, 2011.

<sup>686</sup> Interview with investigative journalist no.1, 2011.

<sup>687</sup> Interview with urban advocate no.6, 2010.

## Low Profile Organised Crime (LPOC) v. High Profile Organised Crime (HPOC)

In the period 2004-11, the Albanian state became stronger and moved to restore order.<sup>688</sup> Important laws against organised crime and an international convention were ratified, and a special Serious Crime Court was established. Almost all those evidenced for local organised crime activities during 1997-98 were arrested and put behind bars.<sup>689</sup> Bringing the country to order took a huge toll on the Albanian state police.<sup>690</sup> Some 220 officers were killed and nearly as many wounded (Hoxha 2008:194). The political elite learned that leaving too much power to organised crime can be very dangerous and thus the arrangement between them and 'off the bar' organised crime became more sophisticated.<sup>691</sup>

AOC gangs working overseas started to invest their illicit proceeds back home and instead of exploiting their country they gave a financial boost to the fragile Albanian economy.<sup>692</sup> The nature of organised crime changed and the patterns of criminality became more complex.<sup>693</sup> Those groups which resisted after the events of 1997 entered into politics and grew strong.<sup>694</sup> They have connections with local authorities, the executive, legislature and judiciary. As noted earlier, they are perceived by the public as Italian Mafia-like structures.<sup>695</sup>

Classic patterns of organised crime such as violence and revenge were fading away.<sup>696</sup> The relationship between organised crime with the political elite and its interconnections with the judiciary changed. With the consolidation of state structures, many politicians abused and manipulated LPOC for their own interests.<sup>697</sup> One interviewed journalist recalled a criminal saying that 'the first time when they [the political elite] should have punished me they released me, and the second time, when they should have released me they punished me. ... for as long as there are only state police killed and not judges, there will be no justice in Albania'.<sup>698</sup>

While LPOC was minimised, HPOC remained embedded in the system. Also, another phenomenon became evident. While many LPOC groups went behind bars due to the

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<sup>688</sup> Interview with urban judge no.4, 2010.

<sup>689</sup> Interview with rural prosecutor no.4, 2010.

<sup>690</sup> Interview with investigative journalist no.2, 2010.

<sup>691</sup> Interview with urban advocate no.3, 2010.

<sup>692</sup> Interview with investigative journalist no.1, 2010.

<sup>693</sup> Interview with urban prosecutor no.4, 2010.

<sup>694</sup> Interview with investigative journalist no.3, 2010.

<sup>695</sup> Interview with investigative journalist no.2, 2010.

<sup>696</sup> Interview with investigative journalist no.1, 2010.

<sup>697</sup> Interview with rural advocate no.1, 2010.

<sup>698</sup> Interview with investigative journalist no.2, 2010.

strong policies against organised crime, many also went overseas.<sup>699</sup> LPOC was more active outside Albania, in the USA, Greece, Italy, Spain, and the UK,<sup>700</sup> whereas within the country HPOC kept expanding and investing in lucrative legal investments and politics.<sup>701</sup> That said, new LPOC did emerge (Hoxha 2008:194-196), and other unfamiliar forms of criminal activity began to appear such as bank robbery, credit card fraud, and cybercrime.<sup>702</sup>

The HPOC groups have invested in media, education and football clubs.<sup>703</sup> They are also involved in exploiting natural resources such as water, forests and minerals.<sup>704</sup> Some have even invested in private police (i.e. security firms) as this gives them the opportunity to not only protect themselves but also monitor important private and public institutions, excluding courts. Almost all government institutions (including ministries) and private businesses which collect sensitive data such as banks and telecommunication companies have hired private police. These security firms give the HPOC groups access to modern weapons and sophisticated surveillance equipment which can easily be used for blackmailing (Turbiville 2006:569).

My data suggest<sup>705</sup> that yet another phenomenon is becoming problematic. In an open conflict of interest, some chiefs of state police stations have employed their own private security firms to guard ministries. In addition, they have close ties with the political elite. For instance, former high-ranking state police are attached to the political party which governed the country during their term and they too have their own private police companies. So the main political parties have made sophisticated links with HPOC through the use of private police firms. My interviewees<sup>706</sup> indicated that some of these former police chiefs who own private security firms and are attached to political parties were heavily involved in the 2011 local elections and demonstrated Mafia-like patterns in protecting the ballots using their own people, many of whom had a criminal record (Zhillia 2011).

It is difficult for the public to view HPOC groups as organised crime entities as they run successful businesses and enjoy respectable social status.<sup>707</sup> They maintain connections

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<sup>699</sup> Interview with urban prosecutor no.6, 2010.

<sup>700</sup> See EUROPOL (2011) 'EU Organised Crime Threat Assessment (OCTA) 2011', April 28; available at [https://www.europol.europa.eu/sites/default/files/publications/octa\\_2011.pdf](https://www.europol.europa.eu/sites/default/files/publications/octa_2011.pdf) [accessed December 6, 2011].

<sup>701</sup> Interview with urban advocate no.4, 2010.

<sup>702</sup> Interview with urban prosecutor no.2, 2010.

<sup>703</sup> Interview with investigative journalist no.1, 2010. In 2012, UEFA also warned Albanian authorities about various organised crime groups which are laundering their proceeds of crime via Albanian football clubs in Albania. *Shqiptarja.com* (2012) 'UEFA: mafia, money laundering through Albanians football clubs' (UEFA, Mafia, pastrim parash ne sport-klubet shqipare), May 3.

<sup>704</sup> Interview with urban advocate no.4, 2010.

<sup>705</sup> Interview via email with a high profile manager of a private security firm, March 2012.

<sup>706</sup> Interview with investigative journalist no.3, 2011.

<sup>707</sup> Interview with urban advocate no.3, 2010.

with both the criminal world and politics.<sup>708</sup> Some of them have become so independent and powerful that they engage in politics to be protected from both prosecution and political extortion. Local LPOC gangs and those overseas are more spontaneous and more exposed to local and international law enforcement agencies.<sup>709</sup> Their connection to politics is seasonal and evident only during political or local elections.<sup>710</sup> My interviews suggest that the agreement between LPOC and politics is grounded in short-term interest. Politicians do not want to risk their reputation through association with violent criminal activity.<sup>711</sup> As a result, we saw a reduction in the violence of LPOC between 2008-10.

As mentioned above, after 2005 there were some successful prosecutions of various organised crime groups. During this period the Albanian government made steady progress in the fight against organised crime, and this was one of the most highlighted positive aspects in the 2011 European Commission Report for this country.<sup>712</sup>

However, my interviews with prosecutors demonstrate that since 2009, while there has been some success in combating LPOC little progress has been made in the fight against HPOC. Official reports show unrealistic figures. Referring to Albanian government statements, Arsovska and Basha (2011:41) note that '12 of the largest criminal clans in the country were investigated in 2005 and more than 150 members of the so-called "mafia families" were arrested. Between 2005 and 2006, around 150 criminal groups were dismantled in Albania and around 1,000 members of those criminal groups were arrested. Also 191 wanted criminals were extradited in that period.' In addition, the Head of State Police, in the annual analysis of state police for 2009, showed that the number of organised criminals captured by police in that year was 142, with 64 for serious offences against persons and property, 31 for drug trafficking, 23 for illegal trafficking, and 24 for economic crimes.<sup>713</sup>

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<sup>708</sup> Interview with rural prosecutor no.4, 2010.

<sup>709</sup> Interview with urban prosecutor no.3, 2010.

<sup>710</sup> Interview with urban prosecutor no.2, 2010.

<sup>711</sup> 'it is difficult to say if there is a permanent connection between small organised crime groups and politicians, because the latter do not have any direct interests with them; there may be a connection, but not to the extent that criminals at such a level can blackmail politicians .....it should be mentioned though that politicians have an interest in contacting criminals during political election campaigns to generate funds and votes. This happens especially when political parties want to attract "Strong" people with a reputation in their area and who have money. With the change of the voting system (regional proportional) the direct relationship between the local politician and the local gang has somehow weakened. Now every contact has to be made with the approval of the head of the political party...' (Interview with urban prosecutor no.1, 2010.

<sup>712</sup> See European Commission (2011) 'Albania 2011 Progress Report', Commission Staff Working Paper, October 12, pp.12-58; available at <https://mail.google.com/mail/?shva=1#inbox/133b6822496f76b0> [accessed December 6, 2011].

<sup>713</sup> *Shqip Gazette* (2010) 'Burgaj: In 2009 there were 326 fewer crimes than in 2008' (Burgaj: Ne vitin 2009 ndodhen 326 krime me pak se ne 2008-n), January 26.

My findings suggest that the above figures are overstated. According to my data,<sup>714</sup> for the period November 2006 to November 2011 there were only 24 organised groups<sup>715</sup> prosecuted by the Prosecution Office for Serious Crime. Charges have been dropped for at least 50% of them either in the First or Appeal Court of Serious Crimes or in the High Court. The trend of those organised crime groups for whom charges were dropped is declining: in 2006 there were six groups, in 2007 only eight, in 2008 only five, in 2009 only one, in 2010 only three, and as of November 2011 only one. This low rate was one of the main criticisms made by the General Prosecutor Ina Rama to the Prosecution Office for Serious Crime as recently as February 15, 2012.<sup>716</sup>

As my data above show, there has been little progress in dealing with HPOC. Some interviewees suggested that there are two main reasons for this: first, the lack of professionalism among judges, prosecutors and state police; and second, the political elite wishes to divert public attention from HPOC. As an international observer put it, 'what we see much more frequently is that there is a tendency to go after low level criminals in order to avoid really digging and finding out where the real problems are... there is a real tendency to avoid digging too deep'.<sup>717</sup>

During 2011-12, there has been a trend for LPOC gangs to return to 1997 patterns of crime where LPOC became exposed in the public and attacked high-profile public officials.<sup>718</sup> Among the most serious were the assassination of Judge Konomi and the alleged murder of a secret service agent who was found in his burned-out car in summer 2011. As recently as December 9, 2011, a 400-gram bomb exploded in the house of the vice chairman of state police in charge of investigating serious crimes, Dorian Muca. It is believed that the attack was intended to kill Muca and his family because of his role in the fight against crime.<sup>719</sup>

My interviews suggest that those judges, prosecutors and state police who were more exposed to crime during 1995-97 are more likely to have close ties with organised crime and become corrupt. Many of them were promoted in 'courts of career' or appeal courts.<sup>720</sup> In Chapter 4 I grouped them in the category 'judges of transition'. My data suggest that today, it is this category of judges to which both LPOC and HPOC find very easy to access and exploit. In late 2005, President Moisiu turned down one of the candidates,

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<sup>714</sup> Interview with urban prosecutor no.5, 2011.

<sup>715</sup> There are two definitions in the Albanian Penal Code for organised crime: organised crime groups and structured criminal groups. The figure given above includes both.

<sup>716</sup> Bakillari, L. (2012) 'Ina Rama criticises the Serious Crime; You are putting into question the existence of the institution' (Ina Rama krition Krimet e Renda, po vinin ne pikpyetje ekzistencen e institucionit), *Mapo Gazette*, February 19.

<sup>717</sup> Personal interview with international observer no.3, 2010.

<sup>718</sup> Some of the 1997 criminals who emigrated in Greece at that time to escape prosecution have in 2012 returned to the country and are committing petty crimes in rural areas. *Shqip Gazette* (2012) 'The Police of Fier City: The criminals of 1997 have returned' (Policia e Fierit: Jane rikthyer kriminelet e 97', March 1.

<sup>719</sup> *Panorama Gazette* (2011) 'TNT's police chief apartment, cameras filmed assailant' (Tritol banesës së shefit të policisë, kamerat filmuan atentatorin', December 9.

<sup>720</sup> Interview with investigative journalist no.1, 2010.

Artan Gjermeni, proposed by the High Council of Justice (HCJ) to become a judge of the Serious Crime Court. According to Moisiu and the then Minister of Justice, Ilir Rusmaili, there were allegations that Gjermeni had close links with one of the most notorious organised crime groups in 1997, 'Banda e Lushnjes'.<sup>721</sup>

In 2006, the same judge was elected by the National Judicial Conference as a member of the HCJ. Ironically, while members of the executive, the democrats initially asked for a thorough investigation of this judge and then they suddenly changed their position and became silent (Moisiu 2009:257). On November 14, 2011, Gjermeni was promoted by the HCJ in the Appeal Court of Tirana.<sup>722</sup>

## Patterns of the Interplay Today

In the preceding sections I described the connection between organised crime and judicial corruption with emphasis on the role of the political elite for the period 1989-2011. In this section I turn to my data and assess this relationship more closely and describe the patterns in more detail. In addition, regarding socio-political factors, my data suggest that the role of state police is also crucial in the interplay between judicial corruption and organised crime.

As mentioned in this chapter's introduction, one of the factors for the failure of law enforcement agencies to fight organised crime is the lack of professionalism and corruption of the state police.<sup>723</sup> My interviews also suggest that the lack of cooperation between the judiciary, prosecution and state police is another significant cause. While there have been significant improvements in urban areas, the coordination between state police and prosecutors in rural areas remains problematic. Many investigations have failed due to leaks of information by state police to local organised crime groups in rural areas.

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<sup>721</sup> *Shqip Gazette* (2007) "'Gjermeni'", Moisiu calls meeting of the HCJ on Tuesday' ('Gjermeni', Moisiu mbledhe te Marten KLD), May 19.

<sup>722</sup> *Panorama Gazette* (2011) 'The HCJ returns Gjermeni who was accused for helping Bare' (KLD kthen Gjermenin, u akuzua per Baren), November 15.

<sup>723</sup> Another factor mentioned by some of the respondents is the confusing system of the state police. According to an urban advocate '...the structure of the state police should change. We should rather have centralised police. At the moment it is chaos. How can a prosecutor deal with so many kinds of police; customs police, judicial police, tax police, and road police? I do not know how many police there are. In addition, no one from the customs police dares to oppose the Ministry of Finance who provides their salary. Even the state police who keep order cannot fight them (executive) because the state police would risk losing their jobs... so how can the poor police survive? So all the pressure goes on the prosecutor. Why? Because the executive in this way wants to cover up the institutional inefficiency of the state police in fighting crime and corruption...' (Interview with urban advocate no.4, 2010). See also US Department of State (2011) '2010 Human Rights Report: Albania', Bureau of Democracy, Human Rights and Labor, April 8; available at <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154409.htm> [accessed December 6, 2011].



As one prosecutor put it, 'at the local level, the state police is inefficient, non-existent and entirely infiltrated by crime'.<sup>724</sup> The politicisation of state police is also of concern. The level of corruption in terms of fighting organised crime is more widespread in the state police. And, according to one of my interviewed international observers, this is because 'policemen are very close to lawyers, parties, suspects and witnesses'.<sup>725</sup> At the local level many state policemen are appointed because of their links with the political elite.<sup>726</sup>

The problem is that organised crime is not only focused in the capital city but is spread all over the country and is extensively engaged in trans-border criminal activities. Another problem revealed by my interviewees concerns the structure of the police investigating organised crime. The current model is 'based on the Italian structure of policing – decentralised, not specialised in organised crime, and spread in different sectors such as judicial, state and customs. This form has proved to be highly ineffective in investigating and fighting organised crime'.<sup>727</sup>

My interviews also suggest that the interplay between organised crime and judicial corruption is very complex. Whereas LPOC generally involves common patterns of corruption such as bribery or threats, HPOC, in addition, involves more sophisticated forms of luring judges such as lobbying for promotion, offering shares in business investments and easy access to high profile politicians.<sup>728</sup>

The majority of my interviewees noted that the most blatant display of the relationship between organised crime and politicians is at elections, and this is becoming evident even in the judiciary. According to one interviewed international observer, 'organised crime is probably centred around political parties and mostly the major political parties have their connections or are actually, I would say, so involved in organised crime that they are the major part of them. ... elections in Albania have never been clean and of course criminal interests have been involved there'.<sup>729</sup>

My findings are confirmed by the diplomatic community in Albania. In his confidential report on the 2009 general elections, revealed by WikiLeaks, the US ambassador in Tirana, John L. Withers II, noted that:

'Despite the relative calm on Election Day, it has very much come to our attention that there is a strong undercurrent of people tied to organized crime that participated and/or were involved in possibly manipulating the June 28 elections. The three major parties, the Democratic Party (DP), the Socialist Party (SP) and the Movement for Social Integration (LSI) all have MPs with links to organized crime. While Post cannot legally prove these links, the conventional wisdom, backed by

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<sup>724</sup> Interview with urban prosecutor no.4, 2010.

<sup>725</sup> Interview with international observer no.3, 2010.

<sup>726</sup> Interview with rural prosecutor no.4, 2010.

<sup>727</sup> Interview with rural prosecutor no.3, 2010.

<sup>728</sup> Interview with investigative journalist no.2, 2010.

<sup>729</sup> Interview with international observer no.3, 2010.

other reporting, is that the new parliament has quite a few drug traffickers and money launderers.<sup>730</sup>

Even in the 2011 local elections there were allegations that the opposition engaged some organised crime groups to protect votes in the ballot centres.<sup>731</sup> As mentioned above, the elections not only link politicians with organised crime. The judiciary also plays a significant role. The Election College is an institution composed of eight appellate court judges formally approved by political parties and which acts as the final court regarding disputes over electoral administration.<sup>732</sup> In this context, the political elite's interest in controlling the judiciary is not only confined to the pure judicial role of the judiciary where judges can review laws brought by the legislature or adjudicate politicians for corruption.

The judiciary can even 'issue' mandates in political and local elections. So there is a double interplay between the legislature, executive and judiciary and this makes the judiciary very exposed to the political elite and organised crime during elections.<sup>733</sup> In this context a corrupt judiciary can on one hand 'provide' mandates for politicians on contested elections and on the other acquit those criminals that help politicians to win.

In the 2001 general elections, the Constitutional Court allegedly favoured the SP with 40 mandates out of 140 members of parliament in total (Baze 2008:247). In the 2011 local elections, the Election College issued a very controversial decision in favour of the executive's representative for the Council of Tirana, Lulzim Basha. In 2011, the mandate of one of the member judges of the Election College was extended by the HCJ for two more years, although she had to retire, and this kind of 'promotion', according to the leader of the opposition, Edi Rama, was payback for her service to the executive during the 2011 local elections.<sup>734</sup>

In addition, in April 2011, Emilian Shullazi, formerly imprisoned for leading an international heroin-smuggling network passing through Albania to Europe, was accused by the SP of obstructing their local election campaign. But Shullazi was released by the court only 24 hours later.<sup>735</sup> On local election day, May 8, Shullazi was arrested near one of the election zones, Fark Commune, Tirana, with eleven other individuals travelling in a bulletproof car and wearing a bulletproof jacket. During the arrest, police agents found three guns, three

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<sup>730</sup> See US Embassy Albania, Confidential Report, reference 09TIRANA552, subject 'Criminals Making the Laws in Albania's Parliament', dated Thursday August 13, 2009; available at <http://wikileaks.org/cable/2009/08/09TIRANA552.html> [accessed December 6, 2011].

<sup>731</sup> Interview with investigative journalist no.2, 2010.

<sup>732</sup> See Office for Democratic Institutions and Human Rights, Election Observation Mission Report for the Local Elections May 8, 2011, p.21; available at <http://www.osce.org/odihr/81649> [accessed December 6, 2011].

<sup>733</sup> Interview with urban judge no.5, 2010.

<sup>734</sup> Balkanweb (2011) 'Rama: Sashenka Jonuzi rewarded for two years of ripping off' (Rama: Sashenka Jonuzi u shperblye me dy vjet rrjepje lekure), November 7; available at <http://www.balkanweb.com/kryesore/1/rama-sashenka-jonuzi-u-shperblye-edhe-me-2-vjet-per-rrjepje-lekure-73581.html> [accessed November 16, 2011].

<sup>735</sup> *Shqip Gazette* (2011) 'Prevented the campaign of Socialist Party (SP), Shullazi is freed' (Pengoi takimin e PS, lirohet Shullazi), April 26.

police radios, three knives and a considerable amount of cannabis sativa.<sup>736</sup> The arrest was made just a few minutes before the closure of voting in Fark Commune. The Court of Appeal released Shullazi again, accepting his excuses that the 'guns and bulletproof jacket were not his'.<sup>737</sup>

The majority of interviewees pointed out that organised crime is now sophisticated in both the patterns of crime it engages in and its interplay with judicial corruption. As one advocate told me, 'The Mafia does not make money through killings anymore, but they get rich by influencing law-making. ... through laws they open legal ways to make criminal money. ... those gangs that are charged these days in the courts are low level organised crime. ... they cannot be called Mafiosi, they do not have the brains to be Mafiosi.'<sup>738</sup> As recently as April 25, 2012 the chief police of the District of Diber, Shemsi Prençi declared in a press conference that he 'was suspended by General Director of Police, Hysni Burgaj because [Prençi] was fighting the Mafia of the Chrome Mines which is linked with the powerful media groups, the intention of whom is to exploit the national wealth'.<sup>739</sup> In addition, Prime Minister Berisha himself issued a very strong public statement that sparked controversy. In 2010, he declared that 'crime has in its foundation 90% of politicians at all levels and who have served it for 15 years'.<sup>740</sup>

A few interviewees highlighted that organised crime groups influence both the left and right wings on issues that interest them more such as property rights and shareholder rights.<sup>741</sup> According to one interviewed urban advocate, the main laws that may have been influenced by organised crime are land law, tax law, company law, public procurement, and law on waste management.<sup>742</sup> The interest in company law is closely related to the privatisation of public property inherited from the communist system in the early 1990s (Mema 1997). In the first phase of privatisation, former workers had the right to own shares in public companies thus becoming owners of these companies (Hashi and Xhillari

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<sup>736</sup> *Tema Gazette* (2011) 'Emiliano Shullazi arrested with 11 others' (Arrestohet Emiliano Shullazi me 11 te tjere', May 8.

<sup>737</sup> *Panorama Gazette* (2011) 'Emiljano Shullazi in cuffs, captured with mask and a gun' (Emiljano Shullazi ne pranga, kapet me maske dhe pistolete), November 9.

<sup>738</sup> Personal interview with urban advocate no.4, 2010.

<sup>739</sup> *Shqiptarja.com Gazette* (2012) 'The chief of police Premci withdraws: Roots of the Mafia of Chrome are in Tirana' (Jep doreheqjen, Prençi: Mafia e kromit i ka rrenjet ne Tirane', April 25.

<sup>740</sup> Gillaj, B. (2010) 'The crime: 90% of high profile politicians have links with crime' (Krimi, 90 per qind e pushtetareve, ne bazat e krimi), *Shqip Gazette*, January 26.

<sup>741</sup> '...in my opinion, organised crime controls political wings, those who governed the country yesterday and those who are governing it today. By "controlling" I do not mean that organised crime commands them, but that it influences them in areas that organised crime is concerned with such as property rights and shareholders' rights. We are at a point where organised crime is part of the politics and influences both sides (socialists and democrats) to achieve its goals...' Interview with urban advocate no.2, 2010.

<sup>742</sup> Interview with urban advocate no.2, 2010.

1999:104). Later the process became corrupt and relevant laws were tailored to give access to those with strong links with the political elite.<sup>743</sup>

According to some interviewees, company law was amended to open loopholes for HPOC to avoid former employees and take these enterprises over.<sup>744</sup> And the courts have been playing a significant role in this corrupt mechanism. The same pattern of 'stealing' the shares of legal owners is also applied to foreign shareholders owning shares in local and foreign companies investing in Albania.<sup>745</sup> According to an international observer, 'the court is used to cheat foreign companies out of their investments. ... they do not allow, legally or illegally, foreign companies to exercise their shareholder rights. ... there have been cases where they simply ignore foreign companies. It might have majority shares and they simply do what they want anyway. ... the Albanian minority does what it wants to and the courts don't enforce the rules.'<sup>746</sup>

Even the 2008-09 changes to tax law, according to one of the urban advocates, were made to favour powerful businesses or help HPOC to launder the illicit money.<sup>747</sup> These changes were in a form of fiscal amnesty and this mechanism was similarly applied even in 2011, just before the local elections.<sup>748</sup> The law on public procurement had for many years been one of the main ways to exploit public goods. A few interviewees highlighted that even with the enactment of electronic procurement, the process is not working. More than 80% of tenders going through this system are dismissed for discrepancies in documentation.<sup>749</sup>

As recently as February 2012, the Advocate of Procurement in its report to the Parliamentary Commission of the Economy declared that in 2011 around 491 companies claimed that procedures for online tenders were violated.<sup>750</sup> The involvement of organised crime in public tenders is hidden from public and is very sophisticated. As one prosecutor put it:

'while organised crime groups do not control those firms that apply for a project, they do try to manage the tender's commission which administrates the process

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<sup>743</sup> Nurellari, A. (2001) 'The Corrupted Process of Privatization in Albania', paper presented at the 10th Anti-Corruption Conference, Prague, Czech Republic, October 7-11; available at <http://www.10iacc.org/content.phtml?documents=300&art=48> [accessed February 21, 2012].

<sup>744</sup> Interview with urban advocate no.2, 2010.

<sup>745</sup> '...one of the mechanisms is that they don't allow foreign companies to exercise their shareholder rights legally or illegally. There have been cases where they have simply ignored the foreign companies. It might have majority shares but they simply do what they want anyway and the court ... the Albanian minority does what it wants to do anyway and the courts don't enforce the rules. I have also seen one case where the majority shareholder rights were taken away in a very questionable manner...' (Interview with international observer no.3, 2010).

<sup>746</sup> Interview with international observer no.3, 2010.

<sup>747</sup> Interview with urban advocate no.2, 2010.

<sup>748</sup> Cocoli, F. (2011) 'Fiscal amnesty' (Amnistia Fiskale), *Panorama Gazette*, March 20.

<sup>749</sup> Personal interview with urban advocate no.2, 2010.

<sup>750</sup> Hoxha, B. (2012) 'The Advocate of Procurement shows the patterns of abuse with tenders' (Avokati i Prokurimeve zbardh zinxhirin e abuzimeve me tenderat), *Mapo Gazette*, February 28.

and declares the winners. So they blackmail the tender's commission and ask them to favour the business firm that has informally agreed with the organised crime group. In exchange, organised crime gets 20% or 30% of the project. Such groups do not participate directly in the tender as this exposes them to investigation.'<sup>751</sup>

The influence of organised crime in law-making was also noted by diplomatic bodies. In the leaked 2009 US embassy cable, shown above, the US Ambassador titles his report 'The Criminals Making the Laws in Albania's Parliament'.

He mentions several 'noteworthy members of parliament with ties to organised crime', such as Tom Doshi<sup>752</sup> who is 'known as the richest member of parliament (MP), with a declared fortune of more than \$15 million and is also suspected of trafficking narcotics'; Lefter Koka<sup>753</sup> who is 'a member of perhaps the most notorious organized crime family in Albania, with ties to narcotics and human trafficking and other illicit activities'; Sokol Olldashi<sup>754</sup> who is 'suspected of smuggling goods and narcotics'; Lulzim Basha,<sup>755</sup> who 'represent[ed] the DP [Democratic Party] in Elbasan, was involved in facilitating the release from prison of a notorious criminal in Elbasan in return for support from the criminal's family. Relatives of the criminal promised to "organize" people in Elbasan to support Basha. The criminal was released on June 29, the day after the elections'; Paulin Sterkaj,<sup>756</sup> who has 'been accused by a former friend of murdering a politician in Shkoder a few years ago. Sterkaj claims to have business interests in oil, restaurants, and construction'; and Gramoz Ruci<sup>757</sup> who has 'long-standing ties to narcotics traffickers and organized crime'.<sup>758</sup>

Another former member of parliament, Gazmend Mahmutaj, was arrested in 1998 by Italian police while he was travelling together with other members of parliament. Mahmutaj was the head of an AOC smuggling drugs in Milan.<sup>759</sup> In as late as May 2012, the

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<sup>751</sup> Personal interview with urban prosecutor no.2, 2010.

<sup>752</sup> Former Member of Parliament for the Democrats and now for the Socialists.

<sup>753</sup> Lefter Koka is a Member of Parliament representing the Movement for Social Integration (LSI) which is currently in coalition government with the Democrats (as of February 2012).

<sup>754</sup> Sokol Olldashi is the current Minister of Public Works, Transport, and Telecommunication and a Member of Parliament representing the DP (as of February 2012).

<sup>755</sup> Lulzim Basha was a minister in key ministries during the Democrats' rule (2005-10) and as of 2012 is the Mayor of Tirana.

<sup>756</sup> Paulin Sterkaj has moved several times from one parliamentary group to another. In the 2009 elections he was the Democratic Party candidate but after a few years he switched to the Socialist Party's parliamentary group.

<sup>757</sup> Gramoz Ruci worked for the communist government in the past and is one of the most influential remnants of the communist party in the Socialist Party today.

<sup>758</sup> See US Embassy Albania, Confidential Report, reference 09TIRANA552, subject 'Criminals Making the Laws in the Albanian's Parliament, dated August, 13, 2009; available at <http://wikileaks.org/cable/2009/08/09TIRANA552.html> [accessed December 6, 2011].

<sup>759</sup> Hasani, H. (2012) 'The file of Kajolli: transcribed the telephone calls of drug trafficking of Gaz Mahmutajn, the close friend of politicians' (Dosja e Kajollit: Zbardhen telefonatat e droges per Gaz Mahmutajn, mikun e politikaneve', *Mapo Gazette*, May 24.

Italian authorities issued an arrest warrant for one of the councillors of the District of Fier, Fatmir Kajolli, a known businessman, a high profile member of the Republican Party (in the recent government coalition), who is accused of running a criminal organisation in Italy during 1998-2001 and charged by the Italian courts in 2000-01.<sup>760</sup>

It is difficult to realise how the above politicians, alleged to have close ties with organised crime, have consolidated their support in their political parties. This raises serious doubts as to the true function of political parties in Albania. Even after this US embassy cable was revealed in the media, in late August 2011, some of these politicians mentioned in the cables were among the most voted individuals in their parties' elections for the new parties' executive committees in autumn 2011. Only a week before the Albanian press published the cables in late August 2011, Basha and Olldashi had the largest majorities of the Executive Committee of the DP, where Basha was first with 116 votes followed by Olldashi with 104.<sup>761</sup>

In December 2011, Ruci held one of the strongest majorities in the General Assembly of the SP and he was the only name proposed by the socialists' leader, Edi Rama, to hold the post of Head of the General Assembly of the party.<sup>762</sup> This may be a typical indicator of how individuals with strong ties to organised crime access political parties and influence directly the law-making and indirectly the justice system in Albania.

Some interviewees told me that organised crime groups have helped judges to be appointed or promoted in key courts. They also influence the decision that cases pertaining to organised crime be given to certain corrupt judges.<sup>763</sup> One interviewed urban advocate pointed out that 'I know cases in the court of Tirana that have been allocated to particular judges for criminal reasons, not in the family section, nor in the administrative section, but in the civil section.'<sup>764</sup> Some of my interviewees noted that HPOC is frequently involved in

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<sup>760</sup> *Mapo Gazette* (2012) 'The Italian file of the businessman Kajolli is opened; The court leaves him under house arrest' (Zbardhet dosja italiane per biznesmenin Kajolli, gjykata e le ne arrest shtepie), May 24.

<sup>761</sup> *Tema Gazette* (2011) 'Basha and Olldashi, new leaders of DP?' (Basha dhe Olldashi, drejtuesit e rinj te PDs?), August 23.

<sup>762</sup> *Panorama Gazette* (2011) 'The Assembly, the Presidency of Socialist Party elected' (Asambleja, zgjidhet Kryesia e Partise Socialiste), December 2.

<sup>763</sup> Interview with investigative journalist no.2, 2010.

<sup>764</sup> 'In most cases the judiciary is influenced by bribes. Given the economic power and the muscle of the "Strong" men, organised crime, together with politicians, or even on their own, have been able to influence the judiciary for their own interests. There are cases where certain judges were appointed to the top of the judicial hierarchy, even at the High Court ... There are rumours that organised crime even influenced the appointments that occurred in the High Court in 2010. There are certain individuals, and I am not mentioning any names, who are traditionally known to have strong links with earlier organised crime groups "Skafistet" since 1997, and who were appointed as judges in high profile courts. They still work in these courts today and have a huge influence in the decision-making of these courts. I'm sure that organised crime has influenced the appointment of judges in almost all levels of courts. I know cases in the court of Tirana...there have been cases allocated to particular judges for criminal reasons, not in the family section, or in the administrative section, but in the civil section...' Interview with urban advocate no.2, 2010.

civil cases. In criminal cases, generally 'organised crime tends to take care of matters before the cases get to court'.<sup>765</sup>

My data indicate that organised crime is 'currently investing in law students to later infiltrate them in the legal system as future prosecutors or judges'.<sup>766</sup> There are rumours that the School of Magistrates is under constant pressure by high profile politicians, businessmen and organised crime. One local observer noted that 'there are individuals out there that are ready to pay even 200,000 euros to get their people accepted in the SOM'.<sup>767</sup>

Several interviewees pointed out that, in general, Serious Crime Courts have become more efficient in dealing with LPOC but that the problem persists with consolidated HPOC.<sup>768</sup> The latter groups are entrenched in business and difficult to investigate. Many of the interviewees indicated that this form of organised crime is 'very powerful, with strong connections in both political camps and at all levels of court'.<sup>769</sup>

It is important to remember that international reports still portray AOC as very violent.<sup>770</sup> And while this may have been true before 2005,<sup>771</sup> my data suggest that from 2005 to 2010 the violence decreased but that in 2011 the trend has changed again. Both interviewed advocates and prosecutors noted that organised crime has 'minimised its aggressive patterns of influence on judges such as verbal and physical threats'.<sup>772</sup> Widespread corruption in the judiciary has facilitated the direct access of organised crime to judges and political support is not as important as it was before 2005. As one prosecutor put it, 'things have changed, we are not in the period of 1997-98 where criminals could enter judges' offices and place a gun and a sum of money on the table and ask judges to make their choice'.<sup>773</sup>

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<sup>765</sup> Interview with international observer no.3, 2010.

<sup>766</sup> Interview with investigative journalist no.2, 2010.

<sup>767</sup> Interview with local observer no.4, 2011.

<sup>768</sup> Interview with investigative journalist no.2; international observer no.2; urban prosecutor no.4, 2010.

<sup>769</sup> Interview with investigative journalist no.3, 2011.

<sup>770</sup> See EUROPOL (2011) 'EU Organised Crime Threat Assessment (OCTA) 2011', April 28, p.29; available at [https://www.europol.europa.eu/sites/default/files/publications/octa\\_2011.pdf](https://www.europol.europa.eu/sites/default/files/publications/octa_2011.pdf) [accessed December 6, 2011].

<sup>771</sup> In 2005 EUROPOL noted that Albanian-speaking organised crime groups are 'renowned for being violent...against law enforcement agencies and judicial officials'. See Council of Europe (2005) '2005 EU Organized Crime Report', EUROPOL, The Hague, October 25, p.27; available at [https://www.europol.europa.eu/sites/default/files/publications/eu\\_organisedcrimereport2005.pdf](https://www.europol.europa.eu/sites/default/files/publications/eu_organisedcrimereport2005.pdf) [accessed December 6, 2011].

<sup>772</sup> Interview with urban judge no.2, 2010.

<sup>773</sup> Interview with urban prosecutor no.2, 2010.

The majority of interviewees highlighted that while organised crime groups attempt to corrupt all levels of court, they tend to target the Appeal and the High Court.<sup>774</sup> According to advocates, organised crime tends to intervene in these levels of court because especially the High Court has the final say. In a 2011 case, involving an international drugs dealer known also as a businessman, Armand Andoni alias Arjan Selimi, the High Court returned both decisions of the First and the Appeal court of Serious Crime which sentenced Selimi to 16 years' imprisonment on the grounds of irregular admission of evidence.<sup>775</sup> Selimi was subsequently killed near his home while under house arrest on the night before his second round of appearance in the First Court of Serious Crime on September 27, 2011.<sup>776</sup>

Another question I wanted to explore was whether organised crime groups helped judges to launder their proceeds of crime. The literature suggests that money laundering is one of the criminal activities that link corrupt officials with organised crime in Albania but there is no data on whether this is the case with judges (Fink and Baumeister et al. 2004). In stark contrast with my previous assumptions, money laundering does not appear to be a criminal activity that links corrupt judges with organised crime. My data show that judges use a similar mechanism with corrupt politicians or criminal groups to launder their proceeds of crime, but they do not use organised crime.<sup>777</sup>

The interviewed investigative journalists suggested that corrupt politicians do not use LPOC to launder their proceeds of crime but HPOC.<sup>778</sup> As mentioned, they usually hide illicit proceeds behind legitimate businesses or put them on behalf of trusted individuals. There is an 'increasing trend for corrupt politicians to invest their money in offshore accounts in countries such as Cyprus, Gibraltar and the Isle of Man'.<sup>779</sup>

Corrupt judges too are applying more sophisticated techniques of money laundering. Increasingly, they are not using the financial system to deposit their licit and illicit income.<sup>780</sup> Some urban prosecutors highlighted that, as with corrupt politicians, 'corrupt

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<sup>774</sup> 'One of our colleagues in one of the NCJ meetings 6-7 years ago said that politicians and criminals did not need us judges of the first instance courts, because their cases are appealed and go to the High Court. ' Interview with urban judge no.1, 2010.

<sup>775</sup> Samarxhiu, Th. (2011) 'The High Court: Mistakes that released Arjan Selimi' (Gjykata e Larte: Gabimet qe lerruan Arjan Selimi), *Shqiptare Gazette*, September 30.

<sup>776</sup> Sokolaj, T. and Bajrami A. (2011) 'Today the Court Case, Arjan Selimi executed with five bullets' (Sot eshte gjyqi, ekzekutohet me pese plumba Arjan Selimi), *Panorama Gazette*, September 27.

<sup>777</sup> Interview with urban prosecutor no.6, 2010.

<sup>778</sup> '...certainly, in the context of the intensification and dynamic of sophisticated organised crime groups, I would not rule out the fact that numerous politicians would alter, or transfer their illicit incomes. Of course they do not do it on their own; they launder dirty money through businesses, through sophisticated organised crime groups who at first glance may seem legitimate, but who are basically criminal organisations, because their activity is not based on having great success in the market but rather on their questionable networks, criminal patterns, and their questionable source of money. This is something that I can confirm from my work experiences investigating crime and corruption...' Interview with urban prosecutor no.2, 2010.

<sup>779</sup> Interview with urban prosecutor no.2, 2010.

<sup>780</sup> Interview with urban prosecutor no.2, 2010.



judges integrate their illicit profits in businesses managed by their close relatives or friends, where in reality, they are businesses owned by judges'.<sup>781</sup> Several judges 'own private businesses such as insurance or travel companies'.<sup>782</sup>

A new pattern of disguising proceeds of crime is becoming problematic. Corrupt judges and public officials hide the true origin of their income in the form of long term interest-free loans or gifts given by their family members or third parties.<sup>783</sup> One of the problems is the lack of law in filling this loophole and it seems that the political elite is reluctant to move amid warnings from experts.<sup>784</sup>

Interviewed prosecutors and investigative journalists pointed out that the most preferable business for organised crime to hide the proceeds of crime is in the construction industry. In 2010 there were around 4,000 apartments for sale in Tirana and the prices were either steady or rising while the purchasing power was decreasing. My data suggest that this is because the main source of money is not coming from the sale of apartments but from money laundering.<sup>785</sup> According to one investigative journalist, 'in a pilot investigation made by [my] newspaper at a recent construction site on the outskirts of Tirana, [we] found that around 80% of investments were by criminal groups'.<sup>786</sup>

Having explored the dynamic between organised crime and judicial corruption at the macro level, I will now demonstrate how this works at the micro level and highlight the role and patterns of each of the main actors in a corrupt criminal court case.

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<sup>781</sup> This was confirmed even at a recent declaration of the Head of the High Inspectorate of Declaration and Audit of Assets (HIDAA); *Mapo Gazette* (2011) 'Head of the HIDAA: Corrupted officials hide their properties behind the names of their relatives' (Kreu i ILDKP, zyrtaret e korruptuar fshehin pasurine ne emer te te afermeve), December 12.

<sup>782</sup> Interview with urban prosecutor no.2, 2010.

<sup>783</sup> Mejdini, F. (2012) 'Public officials and judges, lofty free interest loans' (Zyrtaret dhe gjyqtaret, borxhe te majme pa interes), *Shqip Gazette*, February 13.

<sup>784</sup> See the opinion of Adriatik Llalla, Head of the High Inspectorate of Declaration and Audit of Assets, January 16, 2012; available at <http://www.hidaa.gov.al/16-janar-2012/> [accessed February 21, 2012].

<sup>785</sup> Interview with investigative journalist no.2, 2010.

<sup>786</sup> Interview with investigative journalists no.2 and no.3, 2010.

# The Mechanism of Judicial Corruption in Criminal Cases

To understand the outcome of the influence of organised crime in a court decision I asked interviewees about the mechanism. There are four actors who play a significant role in a criminal court case. First, either state police or the judicial police who are in charge of collecting evidence at the crime scene. Second, the prosecutor who manages the pre-trial phase (i.e. investigation, gathering of evidence, questioning of witnesses, proposal of security measures) and who plays an active role during the trial (i.e. defending of the case, asking for the charge). Third, the advocate who defends the offender and represents him in all phases of the trial (i.e. pre-trial, during the trial, and after). Fourth, the judge, whose role becomes very important during the trial; but he can also seek other evidence; asks for experts; and foremost gives the decision.

My interviews suggest that organised crime tries to penetrate each stage of the trial and seeks opportunities to find the weakest link in the chain of procedures of a criminal case tried in the court or one of the above actors who is willing to accept a bribe.<sup>787</sup> In an environment where judicial corruption is systemic it is not difficult to find the gap.

A few interviewees admitted that bribery has proven a successful pattern compared to other more violent mechanisms,<sup>788</sup> and therefore we see a tendency for organised crime groups to not ask the political elite for support but access judges directly in most cases. In this context widespread corruption in the judicial system has strengthened the nexus between organised crime and judicial corruption.<sup>789</sup>

My data show that there are two ways in which organised crime accesses judges and prosecutors: first, via third parties (e.g. friends/relatives of the judge or the prosecutor), and second, via the advocate. My interviewed advocates explained that 'the advocate organises the whole strategy of how to corrupt the prosecutor and the judge, and how to neutralise the witnesses'.<sup>790</sup> Often, they also link the relatives of the offender with the judge or prosecutor and negotiate the amount of the bribe.<sup>791</sup>

In the following sections, I explain the role of each of the actors in a corrupt criminal court case.

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<sup>787</sup> Interview with rural prosecutor no.3, 2010.

<sup>788</sup> 'Today we do not see criminals attempting to influence the judiciary via violence, blackmail or pressure; they use money. Criminal justice entails many actors, stages and procedures...we have judicial police, prosecutors, and three tiers of the court system... so it is easy to exploit a flaw in the system....' Interview with urban prosecutor no.1, 2010.

<sup>789</sup> Interview with urban prosecutor no.4, 2010.

<sup>790</sup> Interview with urban advocate no.3, 2010.

<sup>791</sup> Interview with urban judge no.2, 2010.

## Judicial or State Police

Organised crime can try to obstruct the process right from the investigation phase, which is mostly related to the collection of evidence. Here the role of judicial or state police is crucial. In the Albanian judicial system both judicial and state police have the right to collect evidence at the crime scene.

My interviews suggest that organised crime tries to manipulate the investigation process through corrupting the police and asking them to either hide or tamper with crucial evidence. Some interviewees said 'there is a market price for hiding or destroying evidence'.<sup>792</sup>

In addition, as mentioned above, corrupt police often inform or leak the information to organised crime. However, my interviewees implied that in serious crime cases state police and especially judicial police 'act more professionally because of a more rigorous role of prosecutors in managing the investigation process'.<sup>793</sup>

## The Advocate

My interviewees noted that there are two types of corrupt advocate: those with experience; and those who have strong contacts with corrupt prosecutors and judges, commonly known as 'Sekser'. While experienced advocates try to avoid bribes where necessary, the 'Sekser' do not.

The latter know the character of most of the judges and prosecutors and also have precise information on which accept bribes and which do not.<sup>794</sup> It is no accident that the 'Sekser' are often the most 'successful' advocates. There are occasions where close family members of the offender are guided by the prosecutor of the case on which advocates to pick, and the suggested advocates are often those who have proved to be loyal to corrupt judges and prosecutors.<sup>795</sup>

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<sup>792</sup> '...there is a market price for hiding or destroying evidence....prices of tampering with evidence are widespread among the public. I have heard that to hide a bullet may go from two thousand up to ninety thousand Euros. And this is not only happening in criminal justice, it is in every sector of life. We know how much a doctor charges for surgery in a public hospital, although surgery legally is free. Likewise prices to circumvent prosecution in a criminal case and to win the case in the court are known. In the community of organised crime groups or gangs especially, the information is more precise. This is the situation unfortunately.' Interview with academic no.3, 2010.

<sup>793</sup> Interview with prosecutor no.3, 2010.

<sup>794</sup> Interview with urban advocate no.3, 2010.

<sup>795</sup> Interview with investigative journalist no.3, 2010.

The majority of my interviewees suggested that there are four characteristic mechanisms used by advocates to undermine a criminal case.

First, advocates tend to delay the decision by not being present during the trial. The subsequent postponement of the case at every stage of the trial is becoming highly problematic. A few interviewees noted that when advocates do this too often in a case, this is an indicator that they are trying to bribe or persuade the witness or are negotiating with either the judge or prosecutor for the bribe.<sup>796</sup>

Second, another common mechanism is where advocates try to neutralise the witnesses, and in criminal cases often the witness withdraws or changes his story before the court from the original statement because of the pressure or money offered by the offender.

According to the majority of my interviewed prosecutors, this has led to witnesses' declarations being considered as unreliable proof. This is where advocates exploit most, because tampering with or destroying evidence is more difficult.<sup>797</sup>

Friends or family of the offender become very active in the process of neutralising the witness either by blackmailing or paying them. Third, advocates also try to persuade or lure experts.<sup>798</sup> In both civil and criminal cases in Albania, often the expert interview or expertise is very persuasive to judges.<sup>799</sup>

My interviewees suggested that contacts with judges or prosecutors are direct, face to face, or via trusted third parties. Contact via mobile phone is avoided due to possible phone tapping. Meetings are organised in particular coffee shops or restaurants either in the town or the outskirts of the city. Judges usually prefer to send others to collect the money, or ask that the bribe be transferred to a special bank account. There are occasions when they accept properties in the form of land or houses, or gifts in the form of cars and vacations.<sup>800</sup>

## **The Prosecutor**

The role of a corrupt prosecutor is more evident in the pre-trial process (i.e. investigation phase) where he has the power to either close the investigation or send it to the court.<sup>801</sup> From there on, the power shifts more to the judge and the advocate.<sup>802</sup>

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<sup>796</sup> Interview with urban prosecutor no.2, 2010.

<sup>797</sup> Interview with urban prosecutor no.3, 2010.

<sup>798</sup> Interview with urban advocate no.2, 2010.

<sup>799</sup> Interview with urban advocate no.2, 2010.

<sup>800</sup> Interview with investigative journalist no.1, 2010.

<sup>801</sup> Interview with urban prosecutor no.1, 2010.

<sup>802</sup> Interview with urban advocate no.5, 2010.

Patterns of behaviour displayed by a corrupt prosecutor include: (1) the collection of non-relevant evidence; (2) avoidance of interviewing crucial witnesses, or the asking of very general and non-specific questions; (3) circumvention or hiding of the most important evidence for the process;<sup>803</sup> (4) asking the court for lenient security measures (e.g. instead of imprisonment the prosecutor asks for a house arrest); (5) passivity during the trial to allow evidence to be easily attacked by the advocate; (6) a failure to react when realising that the witness is somehow giving a different story from that of the original statement during the investigation process;<sup>804</sup> and finally, (7) the request of a lenient sentence for the offender, as in Albania it has become a custom for judges not to give a harsher sentence than that requested by the prosecutor.<sup>805</sup>

In addition, in 2012 the Constitutional Court decided that in cases of the summary procedure 'Gjykimi i Shkurtuar',<sup>806</sup> the court cannot change the legal qualification of the offence and ask for a different one based on the same facts if the offender has agreed to plead guilty for the offence asked by the prosecutor; and second, the court cannot give a different sentence from that required by the prosecutor. This decision contradicts two previous decisions of the Constitutional Court in 1999 and 2003 in which it argued that the court can ask for a different offence from that required by the prosecution if it believes so based on similar facts.<sup>807</sup> It should not be confused however with the security measures whereby in which it is the law that stipulates that a judge can not apply harsher measures from those required by the prosecutor.<sup>808</sup>

## The Judge

The role of a corrupt judge becomes significant during the trial. First, a corrupt judge will wilfully violate the procedure knowing that this will make the Appeal court return the case.<sup>809</sup> Second, the judge will make several minor procedural mistakes knowing that these will be regarded in the Appeal or the High Court as mistakes resulting from the judge's negligence.

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<sup>803</sup> Interview with urban prosecutor no.2, 2010.

<sup>804</sup> Interview with urban prosecutor no.1, 2010.

<sup>805</sup> Interview with urban advocate no.1; urban judge no.3, 2010.

<sup>806</sup> A summary procedure is new form of procedure applied in criminal cases to simplify the procedures of the courts. In these cases the offender agrees to an early guilty plea without having the hearing in the trial and this entails a reduction of up to one third of the sentence in case of conviction. See Ashworth and Zedner (2008). See also the decision of the European Court of Human Rights on the case of Scoppola v. Italy, September 17, 2009.

<sup>807</sup> See the Decision no.4, of the Constitutional Court dated February 10, 2012.

<sup>808</sup> See Penal Procedural Code art.244 point 3.

<sup>809</sup> Interview with urban prosecutor no.1, 2010.

This 'negligent' behaviour will encourage the judges of the Appeal or High Court (if the case is to be sent to appeal) to believe that the judge of first instance has undermined the procedures. In this context, it is highly likely that the Appeal or High Court will return the case to the first instance court for a thorough legal review or give an acquittal. In this regard, the most characteristic procedural problems are those related to late notifications, conflicts of interest (e.g. judges who decide for security reasons that the offender cannot take part in the trial), and the judge's refusal of the defence's request for the collection of certain evidence.<sup>810</sup>

Third, the way a judge questions the offender is another sign of a corrupt judge. Thus, a corrupt judge will try to confuse the offender or the witnesses and make them provide contradictory statements.<sup>811</sup> My interviews show that judges in criminal cases often become more active in the process than is required, and frequently take the role of prosecutor.<sup>812</sup> Fourth, the judge shifts weight from crucial to less-relevant evidence. Fifth, a corrupt judge may on purpose refer to a different law, knowing that this will be a legal element for the Appeal or the High Court to turn the decision down.<sup>813</sup>

To summarise, my interviews suggest that the interplay between organised crime and judicial corruption is complex. I have shown that there are two types of organised crime in Albania –LPOC and HPOC. The patterns of influence on the courts depend on the profile of organised crime groups. Both types of crime use political channels to access the judiciary. LPOC employs common methods of influence on judges such as bribery or threats and also connections with local politicians or corrupt police.

In contrast, HPOC is far more complex and entrenched in business and politics. Such groups use more moderate forms of influence to control the judiciary such as promotion, business shares, or the influence of high profile politicians. In general they have direct access to high profile judges and strong ties with key players in the institutions dealing with the judiciary such as the HCJ.

In addition, my data suggest that HPOC is also influencing particular laws such as Land Law, Tax Law, Company Law, Public Procurement Law and Waste-management Law. My data also show that courts of appeal and the High Court are more exposed to organised crime groups. Judges and prosecutors working in cities where criminal activity was endemic in 1997 are more exposed to corruption and organised crime.

In terms of cases, while property rights cases cannot be excluded, LPOC is more involved in criminal cases; and, HPOC's influence is more on property rights, administrative, tax and company cases. Contrary to the literature, AOC does not base its relationship in Kanun but in family and friendship ties. It was also evidenced that blood feud plays a positive role in 'pulling' organised crime from recruiting members from families under the blood feud regime.

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<sup>810</sup> Interview with urban advocate no.6, 2010.

<sup>811</sup> Interview with urban prosecutor no.2, 2010.

<sup>812</sup> Interview with urban advocate no.1, 2010.

<sup>813</sup> Interview with urban advocate no.6, 2010.

## **EXPLAINING FACTORS OF JUDICIAL CORRUPTION IN THE CONTEXT OF ORGANISED CRIME**

This chapter explores explanations for judicial corruption in Albania. It argues that judicial corruption is one manifestation of the broader phenomenon of corruption there. It implies that roots of judicial corruption are grounded in the same socio-political terrain as other types of corruption. In this study, lack of democratic legitimization of judicial reforms and lack of trust in the courts are contextual conditions that explain why judicial corruption is accepted in Albanian society. Poor economic conditions and financial incentives of judges explain the changing dynamic of judicial corruption inside the court system and its interplay with organised crime in the period 1990-2012. The weakening of social control sheds light on the influence of social factors and context that led judges to corruption. Throughout, this research considers the role of organised crime. The thesis here attempts to provide an in-depth explanation of judicial corruption from a socio-legal perspective. It considers political, institutional, economic, historical and social factors. In short the study here seeks to explain what makes corruption work.

This chapter is divided into three main parts. In the first, I address some general conditions at the macro level envisioned by democratic legitimization theory which explain why people have a negative perception of the role of courts and how this has influenced the tolerance of judicial corruption. Some of the conditions that are considered are lack of trust in the courts, a negative legacy of the communist period and poor standards of democratic participation in judicial reforms.

In the second part, in the light of economic theories, the research moves from a general perspective to more specific conditions related to judges and corruption inside the court system. It explains the role of financial constraints on judges in judicial corruption. It considers the role of low wages, poor quality of bureaucracy and the cost of punishment as favourable conditions for judges to become involved in corruption. It also explains the influence of bribes in the competition between different levels of court and also in promotion of judges. Moreover, it highlights how the widespread use of bribes in the court system has affected the interplay between organised crime and judicial corruption.

While in the first and the second part the study focuses more on institutional and organisation conditions of judicial corruption, the third part turns to the social context and its influence on the deviant behaviour of judges. In this context several key social conditions suggested by social control theories are shown. The focus is on the influence of the disruption of legal culture, judicial quest for a higher status in society, judicial subculture, and the role of customary norms.

## The Theoretical Approach

In this chapter the study turns to the theoretical framework and looks for competing or complementary explanations for the phenomenon in the light of research questions. As mentioned above, three theoretical approaches are drawn on to probe for answers which will help to generate original findings. Problems of democratic legitimation provide a set of conditions that explain why judicial reforms are not yielding results and why corruption is socially accepted in Albanian society. Lack of trust is one of the main conditions considered. In the context of this study, lack of trust involves both a culturally framed negative sentiment against the judiciary inherited from communism, and the consequence of the lack of democratic participation in the institutional reforms. This latter factor suggests that, if society is prevented from having equal and free participation in law-making, the law and courts may lose their legitimacy (Habermas 1998a). As a result people will attempt to circumvent and disobey laws and disrespect the judiciary. In this theoretical framework it is also suggested that anti-corruption policies are invalidated because media and civil society are also corrupted. These changing dynamics of the acceptance of judicial corruption during Albania's transition to democracy explain why judicial reforms have not yielded results. The above factors provide a broad explanation of judicial corruption focusing more on issues outside the court system.

This thesis then moves to particular aspects inside the court system which push judges to corruption. It is argued that this second set of conditions is influenced by a restricted economic growth and market development. Low wages and poor quality of bureaucracy are some of the most important conditions that give rise to corruption inside the court system. This suggests that limited financial conditions for judges have created competition among different levels of the courts to exploit the power of the judiciary for gain, where judges of the higher courts appear to be the most corrupted level. This fact is facilitated by extensive immunity of judges and the low cost of punishment for corruption. Free market policies seem also to have increased the demand on courts for protection of property rights, and this seems to have enhanced the interplay between judicial corruption and organised crime. Contrary to the literature, it appears that organised crime and corrupt judges mostly exchange favours rather than see each other as competitors (Gambetta 1993; Varese 2010).

After an overview of conditions outside and inside the court system, the study then turns to explain the influence of the social environment and the weakening of social control, as a third set of conditions, on judicial corruption. Rapid changes in the legal system and judicial structure, urbanisation and the introduction of free market policies are considered key factors in the disruption of social bonds, and, thus, the disorganising of society. In this context, opportunities for organised crime and corruption to penetrate public institutions and law-making have increased and thus corruption of the judiciary has become more likely.

Another significant social condition relating to social control is the claim by judges for a higher social status in society. This is what Cohen (1955) labelled as 'status deprivation'. Judges seeking higher status and integration, among other things, has pushed them to form a subculture that tolerates deviance. This has led to judicial corruption becoming more



sophisticated. The asymmetrical role of customary norms to judicial corruption is also suggested as a social factor. While the influence of some controversial customs is fading away (i.e. 'Krahinizm'), surprisingly, the role of violent customs (i.e. blood feud) seems to have a continuing positive influence. In contrast, other non-violent customs (e.g. friendship ties) appear to have had a negative effect on judicial corruption.

## Democratic Legitimation of Law

In this section the study begins to explain the general contextual conditions that have favoured judicial corruption to become engrained culturally in society and be accepted as a normal phenomenon even by judges.<sup>814</sup> The analysis begins with the argument that the deficit of trust in the justice system has pushed people away from the judicial reforms. This has weakened social pressure to reform corrupt judges and politicians. Judicial corruption thus has flourished and society's perception of the judiciary has become negative. This tension between society and the judiciary is not a phenomenon of democracy, but, as the study shows in this section, it stems from the communist past. What is also explained is that this negative legacy was reinforced during the transition. The democracy failed to be institutionalised. Lack of access to law-making, a weakened role of civil society and ineffective anti-corruption policies were some of the factors. What is particularly significant during the transition process was the adverse effect of the increase of judicial independence, which, paradoxically, simply boosted judicial corruption more.

### Deficit of Trust in the Justice System

One of my research questions was, 'Why are judicial reforms in Albania yielding so few results?' To a large extent the answer appears to be the lack of legitimation of these reforms as envisioned by democratic legitimation theories. The lack of legitimacy is grounded in a failed system of democratic participation of people in institutional reforms. This is because of a systematic compromise of the election process by political parties throughout the transition.<sup>815</sup> The ruling political class therefore is not effectively the one elected by the people. So society's concerns about corruption generally and judicial corruption specifically, are not reflected in judicial reforms. In recent years, as mentioned

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<sup>814</sup> As per IDRA (2010), around '33.9% of the interviewed judges, [confirm that] corruption in the Albanian court system is a serious problem'. IDRA (2010) 'Corruption in Albania, Perception and Experience', p.26.

<sup>815</sup> See Gjipali, G. (2011) 'Freedom House, Nation in Transit 2011 Report', section on Albania, p.51; available at <http://67.192.63.63/images/File/nit/2011/NIT-2011-Albania.pdf> [accessed April 15, 2012].

in Chapter 4, international reports have used explicit terms such as 'Albania lacks the culture of judicial independence'<sup>816</sup> to show that judicial corruption is becoming a cultural phenomenon.<sup>817</sup> The lack of trust is so deeply entrenched that it has penetrated not only society at large but also the community of judges. One of my interviewed judges recalled asking a member of the HCJ in 2011, whether there was any chance left to improve the situation in the judiciary, and the reply was 'I am afraid...it is too late'.<sup>818</sup>

Thus public trust in the justice system has been undermined. This deficit of trust has pushed people to be sceptical about the capacities of courts to deliver justice.<sup>819</sup> As Krastev (2003:26) puts it, 'in the Western Balkans there is a growing gap between the public and the political elite...[which is producing] growing mistrust in the democratic institutions'.

The courts in Albania are perceived almost in the same light as other corrupt public institutions which serve the powerful elite rather than society in general.<sup>820</sup> This cynical perception has resulted in a widespread mentality wherein the judicial system is seen as corrupt. Thus the most efficient form of accessing courts is 'via informal mechanisms' – bribes, exchange of favours, political influence, organised crime and through customary norms.<sup>821</sup>

The accommodation of society with the culture of informality has created a vicious circle of corruption where everyone feels neglected but also morally reluctant to change. As one intellectual noted, 'we live with widespread collective guilt of feeding our self corruption and crime which grows every day, and which in a certain way is the real problem for the state builders, the law abiding and the judiciary; an atmosphere which corrupts the judiciary but where even the corrupt judiciary contributes to this heavy atmosphere'.<sup>822</sup> There are two main factors that have contributed to the deficit of trust in the justice system overall: first, the communist legacy and, second, the lack of democratic participation in law-making and judicial reforms.<sup>823</sup>

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<sup>816</sup> European Commission Analytical Report (2010) 'Commission Opinion on Albania's Application for Membership of European Union', November 9, SEC1335, p.21.

<sup>817</sup> Some of the interviewed judges shared the same perception. As one judge pointed out '....one of the issues of judicial corruption is the inherited concept from the communist past of a controlled judiciary by the state which has continued even during these years of political transition...principles such as the separation of powers and especially judicial independence are not so clearly perceived by the community of judges....which means that probably even the judiciary finds it difficult to adopt the idea of judicial independence....or judges themselves have made no attempt to avoid references to other powers (executive and legislative)...' (Interview with urban judge no.2, 2010).

<sup>818</sup> Interview with rural judge no.7, 2011.

<sup>819</sup> According to IDRA (2010), 'trust toward the judicial system has declined from 2009, having increased steadily from 2005'. IDRA (2010) 'Corruption in Albania, Perception and Experience', p.23.

<sup>820</sup> Interview with investigative journalist no.2, 2010.

<sup>821</sup> Interview with urban advocate no.7, 2011.

<sup>822</sup> Interview with academic no.3, 2010.

<sup>823</sup> '...if we can quickly skim the post-communist period of Albania in the last twenty years, we see that immediately after 1991, up to 1997 there was a continuation of the communist legacy which was taken over by Sali Berisha, then the President and the Head of the Democratic Party, who

## The Legacy Paradigm

There is a general legacy of distrust in public institutions which may be rooted in the two longest conquests of Albania, namely those of the Byzantine Empire 395-1385 and Ottoman Empire 1385-1912 (Elezi 1999). During these historical periods local people were prevented from law-making and state-building (Anastasi 2007). Subsequent experience under the Soviet bloc continued this tradition. In this section, I focus on the communist legacy (1944-89). The communist legacy and its perceived continuation has impacted negatively on society's expectations of an independent judiciary and has, I argue, weakened social pressure to eradicate judicial corruption. During the transition to democracy (1989-96), the 'path' to judicial independence followed steps similar to judicial politicisation under communism. This made society cynical about the democratic transformation of the courts. As one rural advocate explained, 'people began to make fun of the politicised judges... they used to label them "judges of democracy"'.<sup>824</sup>

Many patterns of judicial politicisation and education used in the early period of communism (i.e. 1950-65) were 'simply transferred and applied by the post-communist political elite in the early phase of transition in 1992-98'.<sup>825</sup> As with the former communist judges who were purged from the system in 1992-93 during the transition to democracy, judges educated in the West in the early 1930s during communism were either removed from the system or jailed for political reasons in 1945-48 (Pashko 1948:59).

The new class of communist judges in the late 1950s were selected from the working class and from those families with strong links with the Communist Party (Konomi 1948:16).<sup>826</sup> The majority of assistant judges were also uneducated and a few judges asked the Ministry of Justice at that time for instructions on whether assistant judges could be allowed to sign with their fingerprints, as many were illiterate.<sup>827</sup> It is important to remember that illiteracy

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continued to rule the country with the same communist patterns. In the aftermath of 1997, we see the rise of the first oligarchs who were former drug traffickers and suspicious businessmen. They were involved in the privatisation of public properties. These individuals invested heavily in the construction industry and other profitable businesses. So these were people who accumulated a lot of wealth very quickly. Gradually these powerful individuals founded their media, a kind of Berlusconi version of "media-politics". Then, after 2005, we see that these oligarchs, similar to Russian oligarchs, began to privatise strategic natural resources of the country, mines, rivers, seas, gas etc. These people have become so powerful now that they not only control politicians but also influence the law making...' (Interview with academic no. 3, 2010).

<sup>824</sup> 'In 1993-97, the weakening of the role of the judiciary became evident. The public perception was so negative that people started to make fun of the politicised judges... they used to label them "judges of democracy"...and this showed not only a lack of power of the state and law but also lack of respect of the citizen towards the state...the fear of the state during communism was replaced by anarchy during the early transition to democracy. And this bad public perception fed judicial corruption further...it then become a vicious circle. A culture of violation of the law was created which is still continuing today.' Interview with rural advocate no.1, 2010.

<sup>825</sup> Interview with urban prosecutor no.4, 2010.

<sup>826</sup> Interview with urban judge no.10, 2010.

<sup>827</sup> Albanian National Archive, File no.1, 1947.

was widespread in Albania in 1945, but it had almost disappeared by the late 1980s. In 1962 only 49 judges had a law degree, 21 had only finished high school, five had finished secondary school and one judge only had primary education.<sup>828</sup> In 1950-65 a new wave of ideological and unprofessional judges entered the system.<sup>829</sup> By that time all Western-educated judges had been removed (Pashko 1948:59). In 1966 only 28.3% of the total number of judges had graduated from a law school.<sup>830</sup>

Similarly, as I showed in Chapter 4, this pattern of politicisation of judicial nominations was mimicked by the post-communist elite in the years 1993-96. In these years 'many of the recruited judges were people with close connections to the government of the time' and 'people ... did not have even a law degree'<sup>831</sup> (Vickers and Pettifer 1997: 246; Bezhani 2003:61-75). Only a few post-communist judges remained in the system.<sup>832</sup> According to one judge interviewed, it was not difficult to recognise some of the post-communist judges during the transition as some of them 'had cut fingers because they had worked as carpenters before becoming judges'.<sup>833</sup>

We see that in both periods political cleansing occurred in the early phases of transitions, i.e. Nazi-fascism to communism (1945-70) and communism to democracy (1992-2000).

Several laws promulgated in the early phase of democracy were loaded with political terms mirroring the highly politicised laws of the communist periods. For instance, in the Albanian Penal Code of 1993, organised crime was defined as 'formation of a criminal group with a fascist, communist, Enverist [i.e. Enver Hoxha the dictator of Albania during communism] totalitarian and terrorist character...'<sup>834</sup> The inherited patterns of judicial politicisation influenced the negative perceptions of society toward the judiciary in the early phase of transition, 1990-96.<sup>835</sup> As one academic put it, 'the problem of the communist legacy in Albania is a real concern for the whole of society and not only for the judicial sector... we have a continued elite spread in all political parties who control the country with the same communist manners, and this for me is one the main causes of corruption today'.<sup>836</sup>

As mentioned earlier, this cynical approach was further developed by the lack of democratic participation in law-making which permanently eroded the legitimacy of the judicial system over the last two decades. I now turn to explain this phenomenon in more depth.

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<sup>828</sup> Albanian National Archive, File no.24, 1963.

<sup>829</sup> Interview with urban judge no.10, 2010.

<sup>830</sup> Albanian National Archive, File no.3, 1966.

<sup>831</sup> Interview with rural advocate no.1, 2010.

<sup>832</sup> Interview with academic no.1, 2010.

<sup>833</sup> Interview with urban judge no.10, 2010.

<sup>834</sup> See Albanian Penal Code of 1993 article 57.

<sup>835</sup> Interview with urban prosecutor no.4, 2010.

<sup>836</sup> Interview with academic no.3, 2010.

## Lack of Democratic Participation

At the outset of this work I asked if the form of Albania's new democracy played a part in judicial corruption and a lack or ineffectiveness of efforts at reforms. According to Habermas (1998a), low societal participation invalidates a regime and weakens society's trust in state institutions. In these settings, the state may shift to a model of control via surveillance and policing, and a crisis of legitimation of public institutions may result. The credibility of judges may be eroded and the enforcement of law may come under question. The legitimisation is thus affected by a very negative opinion about the political class which 'follows the old schemes of corruption... it is very corrupt and with little desire to do something good for the country'.<sup>837</sup>

Growing research shows that Albania is a disputed democracy. Political parties rarely agree on the result of polls and tend to accuse each other of stealing votes (Krastev 2003; Kajsiu, Bumci et al. 2003). Permanent political discontent between the two main political forces, the Democratic Party and the Socialist Party, has produced tension in society and undermined judicial reforms.<sup>838</sup> This was a major consideration in the EU rejecting the candidate membership status of Albania in 2011.<sup>839</sup>

So the 'transition from the communist past to democracy proved to be harder and longer than expected'.<sup>840</sup> Institution-building seems to have suffered during this period, as under communism, from political control. As mentioned earlier, the culture of judicial politicisation and unprofessionalism which was inherited from the communist past, was 'continued and even reinforced in the post-communist period'<sup>841</sup> (Prato 2004:74). The

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<sup>837</sup> '...the inherited issues of the past are just a problem of judicial corruption, but they are a major problem to Albanian society as a whole...it is very complex. We see a continuation of the former communist elite in the system. By "elite continuation" I do not mean the accusations made by political parties to each other or by the political party in power (Democratic Party) to judges of the High Court. These accusations are part of a continued political game of the same political elite, which has the same mentality of governance. What do I mean by this? There has been no honest approach to the lustration laws so far, a real catharsis....absolutely not...there are two main reasons for this approach, firstly, the continuation of the power of the same political communist elite and secondly, the weakened reaction of the politically prosecuted segments of society during 45 years of communism...the latter were not able to take over power during the transition to democracy. ...the current political elite follows the old schemes of corruption... it is very corrupt and with little desire to do something good for the country...' Interview with academic no.3, 2010.

<sup>838</sup> See European Commission (2009) 'Albania Progress Report 2009', p.7; European Commission (2011) 'Albania Progress Report 2011', p.11; available at [http://eeas.europa.eu/delegations/albania/eu\\_albania/progress\\_reports/index\\_en.htm](http://eeas.europa.eu/delegations/albania/eu_albania/progress_reports/index_en.htm) [accessed March 27, 2012].

<sup>839</sup> See European Commission Opinion on Albania's Application for Membership of the European Union 2010, p.11; available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/al\\_opinion\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_opinion_2010_en.pdf) [accessed March 28, 2012].

<sup>840</sup> Interview with academic no.3, 2010.

<sup>841</sup> Interview with academic no.1, 2010.

judiciary had already, like many public institutions (i.e. state police, secret service), entered the era of democracy in 1990-93 with a huge deficit of trust (Kajsiu, Bumci et al. 2003). As Krastev (2003:20) argues, when 'the post-communist type of farewell state replaces the communist type of welfare state, it naturally results in a legitimisation crisis for the new democratic regimes'.

A lack of democratic participation in law-making influences people's perception of the validity of the law and its legitimacy. According to Habermas, valid law arises through a process of non-coercive discussion between parties. This makes law the legitimate power to be enforced. In the context of Habermasian democratic legitimisation of law, the institutionalisation of law enforcement only becomes legitimate if the law is a product of the democratic consent of all interested subjects. This is because, 'judicial decision making is bound to law and legal statutes, the rationality of adjudication depend on the legitimacy of existing law' (Habermas 1998a:238). And the legitimacy of law is guaranteed only by a 'discursive justification' by an independent judiciary which needs to be 'sterilised' from political influence or the legislative role (Habermas 1998a:262).

Albanian society, like all other countries in the post-communist Western Balkans, was trapped and caught by a chaotic situation (Krastev 2003).<sup>842</sup> Habermas' vision of the popular basis of valid law-making and popular sovereignty was not fulfilled in Albania. Access to political discourse is made only via political parties and this has limited society's access to law-making and judicial reforms (Kajsiu 2010). Because 'political parties do not only steal the votes but they also purchase them from constituents'.<sup>843</sup>

As explained in Chapter 1, the role of political parties in post-communist societies is not similar to their counterparts in the West. Although their legal modelling is quite similar, they 'still maintain an inherited communist culture of autocratic control over their subordinates, public policies and institutions'.<sup>844</sup> (Holmes 2006).

Exclusive rapport with the law and judicial reforms gives political parties the power to exercise a 'hegemonic' political behaviour which consists of, first, domination over the public discourse by distracting public opinion on judicial reforms, and second, the exploitation of public resources and institutions, either via defective laws or by controlling the law enforcement agencies, including the courts (Karklins 2005). The 'political control over public discourse and public goods'<sup>845</sup> has influenced society's attitude toward public institutions. People feel frustrated and, evidence suggests, few are motivated to change the situation.<sup>846</sup> So people's inertia and indifference towards crucial reforms for the enhancement of democracy such as judicial reforms has increased (Trimcev 2003).

However, contrary to the Habermasian assumption, lack of democratic participation did not produce a model of a state that exerted its control via surveillance and police but

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<sup>842</sup> Interview with urban judge no.2, 2010.

<sup>843</sup> Interview with academic no.3, 2010.

<sup>844</sup> Interview with urban prosecutor no.2, 2010.

<sup>845</sup> Interview with urban advocate no.4, 2010.

<sup>846</sup> Interview with investigative journalist no.2, 2010.

rather through 'clientelist' networks.<sup>847</sup> The central state had 'mimicked the period of communism'.<sup>848</sup> In Albania we see that the political elite exerts its control by nominating and promoting its own people in public institutions.<sup>849</sup> There is no difference between the rural and urban areas.<sup>850</sup> The powerful elite often 'select people with strong family and friendship ties in the community and appoint them as their representatives'<sup>851</sup> (Gërxfhani and Schram 2008).

The lack of democratic participation in law-making has also given a free hand to the executive to inflate anti-corruption reforms, often implemented under constant pressure from the international community.<sup>852</sup> The post-communist elite plays with the fact that corruption is an indisputable phenomenon of societies in transition, and this narrative has often been used to justify the failure of the executive to fight judicial corruption and organised crime (Krastev 2003:21; Prato 2004:75).<sup>853</sup> As a result, the influence of international pressure on anti-corruption reforms seems to have produced little effect.<sup>854</sup> Another factor why the influence of the international community seems weak is that, 'first of all, internationals often rush to do legal reforms, and second after a while in Albania, they become familiar with the corrupt environment and also attach to politicians'.<sup>855</sup>

Another important element of democratic participation, civil society, whose role is awareness-raising and state-monitoring, is also marginalised in this context.<sup>856</sup> Many NGOs funded by the international community have failed to promote the role of an independent judiciary or denounce the risk of judicial corruption (Krastev 2003:14). One of the problems is that often the research and the main concerns of civil society regarding judicial corruption and the politicisation of courts do not get the public's attention because either they are not made available or do not get the attention of the media<sup>857</sup> which is also

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<sup>847</sup> Interview with investigative journalist no.3, 2010.

<sup>848</sup> Interview with urban advocate no.4, 2010.

<sup>849</sup> Interview with investigative journalist no.2, 2010.

<sup>850</sup> Interview with rural judge no.6, 2010.

<sup>851</sup> Interview with investigative journalist no.2, 2010.

<sup>852</sup> Interview with urban advocate no.1, 2010.

<sup>853</sup> According to IDRA (2010), 'the awareness of the public toward anti-corruption initiatives is very low' and 'only 15.7% of the respondents were aware of at least one anti-corruption initiative in the country'. See IDRA (2010) 'Corruption in Albania: Perception and Experience', p.17.

<sup>854</sup> See European Commission (2011) 'Albania Progress Report 2011', p.13; available at [http://eeas.europa.eu/delegations/albania/eu\\_albania/progress\\_reports/index\\_en.htm](http://eeas.europa.eu/delegations/albania/eu_albania/progress_reports/index_en.htm) [accessed May 7, 2012].

<sup>855</sup> Interview with urban prosecutor no.4, 2010.

<sup>856</sup> See Fundación para las Relaciones Internacionales y el Diálogo Exterior (FRIDE) Report (2010) 'Democracy in Albania', p.15; available at <http://www.fride.org/publication/758/democracy-in-albania> [accessed May 6, 2012].

<sup>857</sup> Interview with investigative journalist no.3, 2010.

controlled.<sup>858</sup> My fieldwork revealed information about these studies and reports, which was made possible only by personal contact with NGOs.

Furthermore, the most outspoken members of civil society tend to be hired by the political elite to manipulate public opinion and some of them have become members of political parties.<sup>859</sup> The media, too, is not independent and is highly politicised<sup>860</sup> (Tare 2009). As one of my interviewees reported, 'this is a regime which is not controlled by police or army but a regime which is controlled through media'.<sup>861</sup> It is not by chance that the majority of the interviewed judges were afraid of the media which has, although not often, attacked them for political reasons.<sup>862</sup>

A few journalists admitted that sometimes the media has been used to attack judges but they also pointed out that there have been occasions when certain segments of the media have protected them. As one interviewed journalist pointed out, 'there have been times when I have sent information on the alleged corrupt behaviour of many judges to my newspaper and the editor has never published them, but I recall that once I sent something about one judge with whom the owner of the newspaper had had a problem before, and the news was published instantly – it was a good coincidence'.<sup>863</sup>

In addition, the direct interplay of society with courts is also a condition of public mistrust in the courts. As I showed in Chapter 5, people are very influenced by improper behaviour of judges in and out the courtroom, the lack of solemnity in the process, 'their expensive life style, lack of transparency in the court system, and lack of professionalism'.<sup>864</sup> In a sense all these factors have enforced the idea in society that judicial reforms are not working.

So the Habermasian 'ideal speech' as a condition for a functioning democracy is absent from Albanian life. Public participation is limited and law-making largely reflects the interests of political and business elites. A few interviewed judges and advocates pointed out that a lack of democratic participation allows the political elite and organised crime to design specific laws to blackmail political adversaries or judges and prosecutors dealing with high profile criminal cases and also exploit society. Some classic examples are the

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<sup>858</sup> Gjipali, G. (2011) 'Freedom House, Nation in Transit 2011 Report', section on Albania, pp.51-52; available at <http://67.192.63.63/images/File/nit/2011/NIT-2011-Albania.pdf> [accessed April 15, 2012].

<sup>859</sup> Two ministers – Majlinda Bregu (Minister of Integration and Spokesperson of the Executive) and Aldo Bumci (Minister of Tourism, Cultural Affairs, Youth and Sports) – and a few vice ministers such as Taulant Bimo. For more see the CVs of the underlined officials at the official website of the Council of Ministers; available at <http://www.keshilliministrave.al/?fq=showcabzvm> [accessed May 6, 2012].

<sup>860</sup> See FRIDE Report (2010) 'Democracy in Albania', pp.16-17; available at <http://www.fride.org/publication/758/democracy-in-albania> [accessed May 6, 2012]. According to

<sup>861</sup> Interview with academic no.3, 2010.

<sup>862</sup> Interview with urban judge no.1, 2010

<sup>863</sup> Interview with journalist no.1, 2010.

<sup>864</sup> Interview with urban advocate no.1, 2010.



illustration laws (Austin and Ellison 2009; Bezhani 2003), Tax Law, Company Law and Land Law.<sup>865</sup> I showed in Chapter 6 that the relationship between organised crime and judicial corruption not only relates to criminal cases but also to commercial matters. Social justice is also undermined, and ‘all those segments of society not loyal to political elites are alienated’.<sup>866</sup>

In short, democracy is not institutionalised nor is judicial independence. A power distance<sup>867</sup> between the elite and society is formed and this has obstructed access to judicial reforms and undermined the legitimacy of the courts. The power distance has increased the cost of accessing courts and this ‘has facilitated a powerful elite and organised crime to penetrate and influence the judiciary’<sup>868</sup> (Trimcev 2003:56).

### **Patterns of Judicial Corruption: Adverse Effect of Judicial Independence**

Lack of democratic participation in law-making has also influenced the dynamics of judicial corruption and sophisticated its interplay with organised crime and the political elite. In this context, we see that the changing dynamics of judicial corruption has followed three stages: first, ‘politicisation’ (1992-96), then ‘criminalisation’ (1997-2000), and finally ‘market-oriented’ corruption (2001-11). In 1992-97 the judiciary was politicised and judicial independence obstructed. The majority of judges were selected and appointed via political channels. Judicial corruption was ‘more a consequence of political corruption’.<sup>869</sup> But in the

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<sup>865</sup> Interview with urban advocate no.2, 2010.

<sup>866</sup> ‘Today in Albania the state is in the hands of let’s say the most economically powerful individuals of the country, which means that, in Albania, those who have more money are more likely to corrupt politics and seize the state, because they are able to buy it, not only buy it but also steal the vote ....so all those segments of society not loyal to political elites are alienated and have no power to influence the law making...’ Interview with academic no.3, 2010.

<sup>867</sup> Some characteristics of ‘power distanced’ societies relevant to Albania are: the middle class is small; power is based on family or friends, charisma, and ability to use force; autocratic or oligarchic governments are based on cooptation; the powerful have privileges; and domestic political conflicts frequently lead to violence (Hofstede 2003:8).

<sup>868</sup> Interview with urban advocate no.4, 2010.

<sup>869</sup> ‘ In 1992-97 judges were hired based mainly on political criteria ...and this structure of judges’ recruitment went back to the same mentality of political control over the judiciary, the control of the mono-party system—the “state-party” (communist system). So despite politicians proclaiming in public that this was the end of the “state-party” and that the time of the modern democratic state had come, in reality the state was in the stronghold of the current political party in power (democratic party)... it ruled over all public institutions including the independent institutions (the judiciary, the prosecution office etc.)... those people who were supportive and had close ties with the ruling political party were placed in key positions... so political sympathies were the basis of public institutions, including the judiciary and prosecution office. What was the outcome? This meant that public officials did not answer to the law but to the political party. Providing favours to the political party in power gave judges sufficient protection against any danger that would come

upheaval of civil riots in 1997 where the state broke down and organised crime was strengthened, the judiciary became vulnerable to criminal groups. By 1998 the judiciary was not only corrupt but also criminalised.<sup>870</sup> So by 2000, as I showed in Chapter 6, a critical mass of corrupt and criminalised judges was present in the judiciary.

In 2001-11 the role of the state strengthened and the quality of the judiciary improved, but the dynamic of judicial corruption 'became more sophisticated'<sup>871</sup> and 'market driven'. Political influence over the judiciary in 2005-11 was mainly focused on the appointment and promotion of judges of the Constitutional Court and High Court. According to the interviewed prosecutors and advocates this was because these courts were 'the ones which the political elite and organised crime dealt with more often'.<sup>872</sup> While the Constitutional Court can be a political obstacle for the executive as it can turn down important laws or cases on constitutional bases, the High Court can be a threat to the high profile politicians accused of corruption and crime. As shown in both Chapter 4 and Chapter 5, the High Court has the final say on both criminal and civil matters to which both the political elite and organised crime can be subject. In addition, in criminal cases, 'the control of the executive over the justice system is also exerted via the state police'.<sup>873</sup> Many interviewed prosecutors pointed out that the nomination of state police is highly politicised and mentioned that this is one of the reasons why the latter are corrupt. In this context, after 2005 political intrusion into the judiciary became selective.

The political interference was exercised at the externalities of the system, at both the entrance door to the judicial system (i.e. investigation processes via corrupt state police) and at the exit door (via corrupt high ). This 'polarised' political influence made the role of intermediary stages of the judicial control (i.e. first instance and appeal courts) irrelevant by thus weakening the due process.<sup>874</sup> This explains why the majority of my interviewees pointed out that both state police and judges of the High Court were among those 'most perceived as corrupted officials in the justice sector'.<sup>875</sup>

In addition, in 2001-11 there has been some progress in both judicial reforms and the fight against organised crime.<sup>876</sup> But while the quality of judicial independence has increased,

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due to violation of the law or corruption....so judicial corruption in that period was more a consequence of political corruption.' Interview with urban prosecutor no. 4, 2010.

<sup>870</sup> Interview with urban judge no.7, 2010.

<sup>871</sup> Interview with investigative journalist no.2, 2010.

<sup>872</sup> Interview with urban judge no.1, 2010.

<sup>873</sup> Interview with urban prosecutor no.1, 2010.

<sup>874</sup> Interview with rural judge no.2, 2010.

<sup>875</sup> Interview with urban prosecutor no.4, 2010.

<sup>876</sup> See European Commission (2011) 'Albania Progress Report 2011', p.11 available at [http://eeas.europa.eu/delegations/albania/eu\\_albania/progress\\_reports/index\\_en.htm](http://eeas.europa.eu/delegations/albania/eu_albania/progress_reports/index_en.htm) [accessed May 7, 2012].

judicial corruption unexpectedly has kept growing (Anderson and Gray 2007:333).<sup>877</sup> I argue that one of the factors in this is that the increase in judicial independence has proved to have given more space and protection to corrupt judges within the system and decreased judicial accountability.<sup>878</sup> As shown in Chapter 4, the control over important institutions within the judicial system such as the NJC and HCJ is 'co-shared among the political elite and strong networks of corrupt judges within the system'.<sup>879</sup> Judges have become more protected from political intrusion but also immune from prosecution for corruption. As the majority of my interviewed prosecutors noted, 'one of the main obstacles to investigating judicial corruption is judicial immunity'.<sup>880</sup> And as one high profile interviewed judge pointed out, 'it is easy to get a judge in the system but it is very difficult to remove him afterwards because of the constitutional guarantees'.<sup>881</sup>

All the prosecutors interviewed for this research confirmed that no judge to date has been imprisoned for corruption. My argument is that this odd relationship where the increase of judicial independence is associated with the increase of judicial corruption may also be a consequence of the lack of legitimacy of the judicial reforms. This lack of legitimacy has, as a result, not been reflected in the behaviour of judges, and also has failed to increase society's trust in the courts. The political elite therefore, has been forced by the international community, rather than by the public, to reform the judiciary.<sup>882</sup> And thus the process seems to have been artificial and inefficient.

In addition, after 2005, the increase in the quality of judicial independence laws *de jure* pushed judges to refine their patterns of activity and 'hide their corrupt actions behind legal entities'.<sup>883</sup> Corrupt judges have developed strong networks with law offices or particular advocates/solicitors and 'Sekser' (middlemen) that are known to have close ties with organised crime and powerful politicians.<sup>884</sup> In recent years, as mentioned earlier, we have also seen that many intellectuals and journalists act as agents of the political elite by

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<sup>877</sup> According to the Transformation Index BTI (2012), 'The judiciary seems to be the weakest link in Albania's fragile system of separation of powers'; available at <http://www.bti-project.org/country-reports/ese/alb/> [accessed March 28, 2012].

<sup>878</sup> The Analytical Report of the European Commission Opinion on Albania's Application for Membership of the European Union (2010:22) points out that '...if the immunity granted to a large group of public officials (MPs, ministers and judges) is meant to increase their independence, it has proven to be a serious obstacle to the investigation of corruption, which increases the risk for this phenomenon'. Available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2010/package/al\\_rapport\\_2010\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_rapport_2010_en.pdf) [accessed March 27, 2012].

<sup>879</sup> Interview with urban judge no.2, 2010.

<sup>880</sup> Interview with urban prosecutor no.1, 2010.

<sup>881</sup> Interview with urban judge no.7, 2010.

<sup>882</sup> Several laws are approved as part of the Stabilisation and Association Agreement with the EU but there are still important laws waiting in parliament for the consensus of political parties. See European Commission (2011) 'Albania Progress Report 2011', p.11; available at [http://eeas.europa.eu/delegations/albania/eu\\_albania/progress\\_reports/index\\_en.htm](http://eeas.europa.eu/delegations/albania/eu_albania/progress_reports/index_en.htm) [accessed March 27, 2012].

<sup>883</sup> Interview with urban prosecutor no.1, 2010.

<sup>884</sup> Interview with international observer no.3, 2010.

protecting their interests in the public discourse. Santino (2003) calls them the 'Mafia bourgeoisie'. Together with politicised intellectuals and journalists, corrupt judges and advocates/solicitors have formed a criminal amalgam which obstructs the access of society to law-making and justice. As one prosecutor put it: 'it seems very strange, there is an extraordinary coordination between the political elite, intellectuals and media when the political elite wants to fight us'.<sup>885</sup>

As a result, popular communicative power has weakened against the arbitrary administrative power of the state, the distance between society and the courts has increased and thus corruption and criminalisation of courts has become institutionalised.

## Economic Conditions

This study now turns to explain some other conditions suggested by economic theories which give rise to actual dynamics of corruption inside the court system. In this section I consider how limited financial conditions have pushed judges to accept bribes to self-support their weak economic status. Research in the field suggested two main general economic conditions: low wages and poor quality of bureaucracy.

In addition, the role of the low cost of punishing judges for corruption and their immunity are also considered as significant factors that helped judges to not being accountable for their misdoings. This appears to have decreased the cost of punishment for judges to accept bribes. The study then goes on to explain the dynamics of bribes in court cases and the prevalence of corruption in the higher courts. This approach is helpful to understanding better the shift from 'criminalisation' to the 'market-oriented' phase of judicial corruption.

Following up the 'market-oriented' dynamics developed earlier, I explain the reasons why judicial corruption does not compete with organised crime for the protection of property rights. This argument is helpful to understand the reasons why organised crime has apparently withdrawn from violent patterns of influencing the judiciary and why it has given more preference to the 'clientelistic' relationship with corrupt judges.

One of the key research questions to answer in this section concerns the role of low wages as a significant factor in pushing judges toward corrupt practices. Other more specific research questions will also be considered, such as: what makes judges accept bribes? why is corruption more evident in criminal cases, and why is the level of bribe paid higher in civil cases? In addition, why are bribes paid in the High Court higher than those paid in both appeal and first instance courts, and how does this 'market' of bribes influence the cost of promotion to 'career courts' appeal and the High Court? And finally, why did the level of bribes increased after 2005?

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<sup>885</sup> Interview with urban prosecutor no.4, 2010.

The role of low wages, is, my research suggests, only a partial explanation for judicial corruption.

‘Economic theories’ highlight that economic-political transformation from a centralised to an open market economy creates favourable opportunities for the political and business elite to exploit public goods in post-communist societies (Tanzi 2002). Control over law-making and law enforcement give the political elite a monopoly in producing regulation, manipulating tax policies and controlling the disbursement of public funds (Holmes 2006). As mentioned earlier, several studies have shown that Albania, borrowing again Hofstede’s term (2003:5), is a ‘power distance’ society where ‘the less powerful members of institutions and organizations within [the] country expect[ed] and accept[ed] that power [was] distributed unequally’ (Prato 2004:73).

The judiciary seems to have been ‘one of the main independent institutions affected by the reduction of budget’<sup>886</sup> in the transition period and this has reduced significantly the efficiency of the judiciary (Kajsiu, Bumci et al. 2003).<sup>887</sup> I showed in Chapter 4 that in the last decade the Albanian government allocated less than 1% of GDP to the judiciary. The consequences of budgets for judges’ financial status, improvement of the courts’ infrastructure and enlargement of the administrative staff are very frequent avenues for judicial corruption, especially in developing countries (Voigt 2007:296; Rose-Ackerman 1999).

## Low Wages

The majority of my interviewees noted that judges’ low wages is one of the main factors of judicial corruption.<sup>888</sup> According to a Transparency International report of 2011, Albanian judges had the lowest salaries in the Western Balkans.<sup>889</sup> Shapiro and Stiglitz (1984:437) argue that there is a positive correlation between wage levels and corruption. According to Yang and Ehrichs (2007), the lack of ‘adequate’<sup>890</sup> salaries pushes judges to look for other financial alternatives to substantiate their financial needs. A high wage in a country where the unemployment rate is high increases the value of the job position and this increases

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<sup>886</sup> Interview with urban judge no.8, 2010.

<sup>887</sup> See also the European Assistant Mission to the Albanian Justice System (EURALIUS) (2006) ‘Increase of Judicial Budget Aiming to Reduce Corruption Degree based on European Countries’ Experience’. The material was not published.

<sup>888</sup> My findings are in line with the findings of IDRA (2010) which show that ‘there is an increase of near 10 percentage points compared to 2008 of the percentage of judges who view salary increase as the best tool of improving their (judges) performance’. IDRA (2010) ‘Corruption in Albania Perception and Experience: Judges Survey 2010’.

<sup>889</sup> TI (2011) ‘EU Anti-Corruption Requirements: Measuring Progress in Albania, Kosovo, FYR Macedonia and Turkey’, p.6.

<sup>890</sup> Yang and Ehrichs (2007:49) define adequate salary as ‘a wage that ensures judges and prosecutors can support their families, remain loyal to their profession and, at least, have no economic “need” for resorting to corruption’.

the cost of accepting bribes because then the bureaucrat risks losing his job. Shapiro and Stiglitz (1984) highlight that the role of high wages becomes significant in countries where the value of bribes is high and chances of prosecution for corruption very low. I speak about the cost of prosecution below.

However, while the inadequate wage strategy paradigm was supported by many of my respondents, I was surprised to learn that a number of the interviewed judges did not rank poor salary as the first factor in judicial corruption and pointed out lack of integrity as the major problem.<sup>891</sup> As one judge declared, ‘the most important factor is integrity and the level of professionalism of judges because despite the economic conditions and expensive cost of living, a judge with integrity should not be compromised and corrupted’.<sup>892</sup>

Linking causes of judicial corruption with poor salaries alone is also not supported by many authors (Yang and Ehrichs 2007:51; Voigt 2007:299). Van Rijckeghem and Weder (2002) argue that trying to increase the salaries of public employees above the level of bribes in order to minimise their incentives for taking bribes may have an adverse effect as this can increase the level of bribes. Tanzi (2002:34) points out that raising wages to compete with the level of bribes ‘can achieve part of the objective...as even at high wages some individuals may continue to engage in corrupt practices’.

In addition, poor salary without taking into account other social benefits related to the social status of judges – such as good pension schemes, interest free loans, subsidised transport or financial schemes to support education of judges’ children – has not been proved to be sufficient to increase the value of the job position and keep judges from corruption (Van Rijckeghem and Weder 2002:60). The negative influence of poor social status on judicial corruption was confirmed by the majority of my interviewed judges in both urban and rural courts.<sup>893</sup> Social status is discussed in greater depth below.

It became evident that the influence of the poor salaries should be seen within the context of political and economic changes.<sup>894</sup> Some interviewed judges suggested that the level of wages played a significant role in the early phase of transition (1990-93) where corruption was still in its infancy. The rise of wages in the first decade of democracy (1990-2000) helped judges to avoid small bribes but failed to restrain judges from large bribes. The reason, according to a judicial inspector, was that ‘with the increase of privatisation and rapid change of land law in 1992-97 the level of bribes offered to judges after 2000 was highly disproportionate with the level of their salaries’.<sup>895</sup>

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<sup>891</sup> IDRA (2010) finds that while 33% of surveyed judges mentioned the salary increase as a concern, at least 22% of them also pointed out the need for ‘better training on ethical behaviour’ and also ‘competence and fairness’. See IDRA (2010) ‘Corruption in Albania Perception and Experience: Judges Survey 2010’.

<sup>892</sup> Interview with urban judge no.2, 2010, see also quote no.39, p.169. Interviewed prosecutors also shared the same view. As one prosecutor noted ‘... I do not think that judicial corruption is only about poor salaries.. it is more about the widespread mentality of quick enrichment in a short time. However, low salaries, lack of professionalism and poor education of judges are also essential factors to be considered...’ Interview with urban prosecutor no.5, 2010.

<sup>893</sup> Interview with urban judge no.1, 2010.

<sup>894</sup> Interview with rural judge no.6, 2010.

<sup>895</sup> Interview with judicial inspector no.2, 2010.

The small increase in salaries merely changed patterns of judicial corruption and made them more 'market-oriented'. As I showed in both Chapters 4 and 5, political influence and the influence of customary norms is gradually becoming more monetised in nature. Judges prefer financial means in exchange for their services.<sup>896</sup> In the last decade judicial corruption has been more about judges' personal greed to maximise their incomes illegally. So judges do not take bribes to subsidise their needs but they 'take bribes to become rich'.<sup>897</sup> And this is why some of my respondents considered lack of integrity as the main factor.<sup>898</sup> The influence of the role of poor salary however, is another argument which explains the changing dynamic of judicial corruption to 'market-oriented' corruption mentioned earlier.

### Poor Quality of Bureaucracy

Another factor suggested by interviewed judges was the impact of the poor quality of bureaucracy on judicial corruption (i.e. lack of meritocratic recruitment, unfair internal promotion, and non-competitive salaries)<sup>899</sup> (Schneider and Enste 2000; Tanzi 2002:32; Rauch and Evans 2000:18). A lack of meritocratic recruitment undermines judges' trust in the justice system; it discourages them and weakens their resistance to bribes. As one judge put it, 'we see that corrupt judges are promoted and those with integrity alienated, and this has been one of the biggest dilemmas for the majority of judges and this disappointment has given a considerable boost to the phenomenon of corruption in the judiciary'.<sup>900</sup> I have elaborated and explained the consequences of poor infrastructure and the harmful role of the corrupt scheme of promotion in Chapter 4. I showed how the HCJ has manipulated the 'career courts'. I also highlighted that the perception of judges regarding the promotion schemes was very negative and some of them refer to it as 'putting a price on justice'.<sup>901</sup>

However, the meritocratic recruitment of judges was problematic before 2000 because 'the hired candidates were selected based on vague criteria (e.g. ten years' work experience or high integrity), something that gave a free hand to the political elite to pick and choose often the most loyal candidates to political parties'.<sup>902</sup> From 2000 onward the School of Magistrates (SOM) has managed the process of recruitment. As mentioned in Chapter 4,

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<sup>896</sup> Interview with investigative journalist no.1, 2010.

<sup>897</sup> Interview with urban advocate no.2, 2010.

<sup>898</sup> See also that in IDRA (2010), surveyed judges also rated other factors as important in increasing their performance such as training (20.4%) and improved facilities/equipment (15.8%). IDRA (2010) 'Corruption in Albania Perception and Experience: Judges Survey 2010'.

<sup>899</sup> Interview with rural judge no.10, 2010.

<sup>900</sup> Interview with urban judge no.2, 2010.

<sup>901</sup> Interview with rural judge no.2, 2010.

<sup>902</sup> Interview with urban advocate no.1, 2010.

90% of the recruited judges after 2000 have to graduate from the SOM. The majority of the interviewed judges noted that in the last decade, 'the main problem in terms of the quality of bureaucracy has been the promotion of judges and not the recruitment'.<sup>903</sup> In addition, the poor quality of bureaucracy has pushed judges to 'find other ways to improve their economic status'.<sup>904</sup>

After 2001, we saw a 'clientelist' rapport between corrupt judges, litigants and advocates being formed.<sup>905</sup> Applying Green and Ward's definition (2004:21) on 'clientelism', the judge (i.e. patron) exercises his power in favour of the law office/Sekser (i.e. client), who reciprocates by offering 'personal gifts and guaranteeing loyalty'. As I showed in Chapters 4 and 5, many judges in urban courts are linked with certain advocates in the role of middlemen 'Sekser' or law offices who 'rent' them for both their support in a court's case and for access to other colleague judges in exchange for the payment.<sup>906</sup>

There is a growing body of literature demonstrating that many public officials consider bribes as a rent for their services (Dabla-Norris and Wade 2002). This principal-agent relationship between judges and advocates (i.e. representatives of litigants) has influenced society's perception of judicial decisions as a commodity, the judicial system as a 'market' and judges as suppliers of 'justice'. And this has caused the 'bribe' or 'gift' given to judges to be seen as something normal. As one prosecutor put it, 'it has become a cultural norm that the court's decision has to be followed by a sort of reward or compensation provided by the winning party to the judge'.<sup>907</sup>

Another aspect of 'clientelism' which is related to the 'guaranteeing loyalty' feature of judicial corruption is that corrupt judges are looking to hide their corrupt activities and are investing in intermediary mechanisms (i.e. law offices) which 'act as their agents'.<sup>908</sup> I argue that judges in urban areas are using law offices more often because the society there is more diverse and open, and the use of family ties is very difficult. So the 'law office' as a mechanism has been proved by corrupt judges in rural areas to have secured more secrecy and more loyalty.<sup>909</sup> However, this additional investment has increased the cost of corrupt transactions (Rose-Ackerman 2010:219; Lambsdorff 2007:235). And this cost may be one of the reasons why the level of bribes has increased in the last decade in rural courts.

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<sup>903</sup> '...the main problem in terms of the quality of bureaucracy has been the promotion of judges and not the recruitment...thus establishing their career — a career which is not clearly defined in the law as there is no specific law or specific procedure explaining judicial careers ... ' Interview with rural judge no.1, 2010.

<sup>904</sup> '... one of the factors of judicial corruption is not only the poor salary but also other financial support that the state should provide to judges to improve their social status such as preferential mortgage loans or loans without interest. Judges should not feel inferior in the locality in which they work ... ' Interview with rural judge no.4, 2010.

<sup>905</sup> Interview with international observer no.3, 2010.

<sup>906</sup> Interview with academic no.1, 2010.

<sup>907</sup> Interview with urban prosecutor no.2, 2010.

<sup>908</sup> Interview with investigative journalist no.3, 2010.

<sup>909</sup> Interview with investigative journalist no.1, 2010.



My findings suggest that all the above factors – low wages, poor quality of bureaucracy and the ‘clientelist’ regime – have weakened the role of honest judges in the system and strengthened that of corrupt judges. A few advocates and judges noted that ‘honest judges rely only on their salary which is not sufficient to cover their basic needs’.<sup>910</sup> The cost of living in rural courts is cheaper and this may be one of the reasons why many of the honest judges are in these courts. In striking contrast, corrupt judges seem to have abused the theory of poor salaries and used this claim as an excuse to the public to justify their demand for bribes. As a local observer told me, ‘it is not about the low wages because every judge before entering the system has agreed to earn as much... they cannot hide behind poor wages and accept bribes... yes, low wages influence but their role is not as important in causing judicial corruption as is often propagated by judges’.<sup>911</sup>

Therefore, honest judges cannot advance in urban courts because the costs of living there are higher and, secondly, they do not have the financial power to ‘purchase’ their promotion as corrupt judges do.<sup>912</sup> This has increased the number of corrupt judges in the system and institutionalised judicial corruption. As one judicial inspector noted, ‘the increase of salaries may help positive judges to detach from corruption and decrease the number of corrupt judges in the system’.<sup>913</sup>

So honest judges are under constant pressure either to ‘conform to the system or withdraw’.<sup>914</sup> According to Guerrero and Rodríguez-Oreggia (2008:359) the pressure of the institutional culture on the behaviour of the individual in relation to corruption is one of the factors that influence the individual’s choice to accept bribes. This means that if someone works in institutions where corruption is endemic, the individual is forced to become involved in corruption as otherwise he will not be able to ‘survive’.

This phenomenon, according to Guerrero and Rodríguez-Oreggia (2008:359), produces a ‘vicious circle’ of corruption that the individual lives in. An additional ingredient of the ‘vicious circle’ is the low social cost of the bad reputation of a corrupt judge in public (Jui-jen Chang and Chia-ying Liu 2007). I argued earlier that judicial corruption is ‘socially accepted as something normal in Albanian society’.<sup>915</sup> According to Guerrero and Rodríguez-Oreggia (2008:363) in developing countries, where the social cost is not perceived as a collective harm by the public, the level of corruption in the system becomes paramount.

In addition, ‘a corrupt judge sees an honest judge as a threat as the latter may make a difference in the public with his service and this may expose the former more in public and the corrupt judge may risk losing his job’.<sup>916</sup> Also the ‘cost of service offered by honest

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<sup>910</sup> Interview with rural judge no.10.

<sup>911</sup> Interview with local observer no.1, 2010.

<sup>912</sup> Interview with investigative journalist no.2, 2010.

<sup>913</sup> Interview with HCJ inspector no.2, 2010.

<sup>914</sup> Interview with urban advocate no.7, 2011.

<sup>915</sup> Interview with urban prosecutor no.4, 2010.

<sup>916</sup> Interview with urban advocate no.7, 2011.

judges is less expensive than the one offered by corrupt ones'<sup>917</sup> and this can significantly reduce the level of the bribes and, as a result, reduce the revenues of corrupt judges. The arguments cited above may explain why the majority of honest judges work mainly in the first instance courts in rural areas.

## **Cost of Punishment**

Another factor of judicial corruption suggested by my findings is the low cost of punishment of judges for corruption. Economic theories argue that if the value of the bribe exceeds the expected cost of penalties of law enforcement, judicial corruption is more likely. In other words, judges will not only be pushed to accept informal payment to subsidise the deficit from poor wages but they will also consider the cost of prosecution for corruption, which is another risk of losing their job. Guerrero and Rodríguez-Oreggia (2008:359) argue that both the briber and the bribee base their decision on a calculated cost benefit of their actions.

This is what Becker (1968:170) calls the cost of crime. So if the profit from the bribe is higher than the cost of being punished or caught by law enforcement agencies then a judge is more willing to accept bribes. In the Albanian context, the benefit of paying for a bribe is far higher than the cost of being prosecuted for judicial corruption, and in these circumstances the quality of enforcement, argue Becker and Stigler (1974:4), 'would tend to decline as the gain to violators increases'.

My data suggest that there are two factors which make the cost of convicting judicial corruption cheap. First, the general social perception that corruption is not punished and no members of the public are interested enough to chase it<sup>918</sup> (Krastev 2003). This phenomenon is otherwise known as the culture of impunity.<sup>919</sup> According to a 2011 report by Freedom House, 'official immunity and a frequent lack of determination to see cases through to a verdict nourished the country's already widespread culture of impunity'.<sup>920</sup>

My interviewed academics noted that the law either is not enforced to high profile public officials or enforced to those targeted by the political elite. As one academic put it, 'On one hand the law is enforced selectively and on the other public institutions shut their eyes against actions of those public officials who violate the law... and this selective enforcement of law has created the idea that the law has a secondary role in society and

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<sup>917</sup> Interview with rural judge no.10, 2010.

<sup>918</sup> Interview with academic no.3, 2010.

<sup>919</sup> Ekanem (2012:51) defines a culture of impunity as 'a situation in which people in society have come to believe that they can do whatever they want with impunity, which means exemption from punishment, harm or retribution'.

<sup>920</sup> See Gjipali, G. (2011) 'Freedom House, Nation in Transit 2011 Report', section on Albania, p.53; available at <http://67.192.63.63/images/File/nit/2011/NIT-2011-Albania.pdf> [accessed April 15, 2012].

that is an instrument in the hands of the powerful elite.’<sup>921</sup> And this sceptical public perception has weakened the public pressure to corrupt judges<sup>922</sup> (Prato 2004:75).

The second factor is the cost of the immunity of judges. While the immunity granted to judges is intended to protect the judiciary from the intrusion of two other branches, in practice this has proved to have become a barrier to prosecutors investigating judges for corruption. According to one prosecutor, ‘when there are indications (indicia) that a judge is engaged in a corrupt activity they cannot start an investigation without asking the HCJ to lift the immunity of the suspected judge’. The interviewed prosecutors also claimed that ‘this procedure exposes their investigation and makes it very difficult for them to collect evidence’.<sup>923</sup> Another legal barrier is ‘article 289 of the Procedural Penal Code which requires prosecutors to seek authorisation before using special measures to collect evidence [i.e. phone tapping, interception of communication, search and seizure in private or office]’.<sup>924</sup> It should also be mentioned that there is a tendency for judges and prosecutors protect each other,<sup>925</sup> something indicated in Chapter 5. I elaborate more on this aspect in the section on ‘social control conditions’ below.

That no judges have been condemned for corruption speaks volumes about the low cost of the conviction of judicial corruption in Albania. The majority of interviewed judges disagreed with the claims of the interviewed prosecutors and mentioned that immunity *per se* is not in fact the real problem but pointed to the lack of judges’ integrity, professionalism and poor economic conditions. However, the international community holds the same position as my interviewed prosecutors.<sup>926</sup>

I now turn to the other specific research questions which help to understand the dynamic of judicial corruption inside the judiciary.

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<sup>921</sup> Interview with academic no.3, 2010.

<sup>922</sup> Interview with local observer no.1, 2010.

<sup>923</sup> Interview with urban prosecutor no.2, 2010.

<sup>924</sup> Interview with urban prosecutor no.2, 2010

<sup>925</sup> Interview with rural judge no.10, 2010.

<sup>926</sup> According to the European Commission, ‘One of the main factors obstructing investigations into possible cases of corruption in the judiciary is the full immunity enjoyed by judges. It will be necessary to limit or abolish the immunity of judges, which requires changes to the constitution.’ See European Commission (2011) ‘Albania Progress Report 2011’, p.11, Enlargement Strategy and Main Challenges 2011-12, Brussels, October 12; available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2011/package/al\\_rapport\\_2011\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/al_rapport_2011_en.pdf) [accessed April 15, 2012].

## Presence of Bribes in Court Cases

In this section I explain why judicial corruption is more evident in criminal cases and why the level of bribes is higher in civil cases. A few interviewed advocates noted that ‘there is a price list in the black market for both civil and criminal cases’.<sup>927</sup> In a civil case the price of the bribe is negotiated based on the value of the court’s case by both judge and litigants (i.e. represented by their advocate).<sup>928</sup> In criminal cases ‘the situation is simpler because of the criminal procedure, and because there is a detailed price list in the black market known in the community of lawyers’.<sup>929</sup> For instance, ‘there is a price for tampering with evidence, for discounting a year from the imprisonment, or for changing the decision from custody in prison to house arrest’.<sup>930</sup> The majority of interviewees suggested that ‘corruption is more evident in criminal cases but the level of bribes is higher in civil cases’.<sup>931</sup> There are three explanations implied by my findings.

First, corruption in criminal cases is easy to measure and more predictable (e.g. a large discounted imprisonment rate from 25 years to 15 years or an acquittal for a corrupt politician whose evidence for imprisoning is clear).<sup>932</sup> Second, in contrast with criminal cases, the procedure of civil cases is more complex, the timing of the final verdict is lengthier (it may take up to seven years if the case goes to the High Court) and the outcome is uncertain.<sup>933</sup> Taking into account the commercial nature of many of the civil cases, all these factors increase the cost of accessing the court as the value of both favourable decisions and the time of the court’s process become very precious, therefore judges not only ‘sell their support but also the time to speed up the process’<sup>934</sup> (Lui 1985; Leff 1964).

Third, while courts remain the main setting for resolving civil cases, in criminal cases, people, especially in rural areas, resort to customary norms to solve their disputes. Apart from the blood feuds, some of my interviewed judges in the North mentioned that ‘there are non-violent customary norms preferred by people in the hinterland because of their advantages compared with institutional ones’.<sup>935</sup> So the outcome of the process can be

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<sup>927</sup> Interview with urban advocate no.3, 2010.

<sup>928</sup> Interview with urban advocate no.3, 2010.

<sup>929</sup> Interview with urban advocate no.3, 2010.

<sup>930</sup> Interview with urban advocate no.6, 2010.

<sup>931</sup> Interview with rural judge no.10, 2010.

<sup>932</sup> Interview with urban advocate no.3, 2010.

<sup>933</sup> Former Minister of Justice, Enkelejd Alibeaj said that in the inspection conducted by the Ministry of Justice 2008, they found out that there were occasions when it took the Appeal Court up to eight months to publish the court decision.

<sup>934</sup> Interview with urban advocate no.2, 2010.

<sup>935</sup> ‘...there are non-violent customary norms preferred by people in the hinterland because of their advantages compared with institutional ones...mostly they are applied in cases of property issues and cases of honour related to divorce cases .. but in general they have been more on property disputes...in the hinterland there were no documents related to land ownership ...this is how

more predictable, these customary norms are less costly (i.e. no legal and court fees), efficient (very short time-scale) and enforceable (accepted and recognised in society) (Cooter and Rubinfeld 1989).<sup>936</sup>

Interviewed judges in rural courts highlighted that, with the increased modernisation of the rural areas and rapid mobility, the role of customary norms is weakening and forms of judicial corruption are becoming more commercialised. And this is the reason why patterns of judicial corruption are mimicking those of urban areas. As one rural judge put it, 'patterns of judicial corruption are moving from those based on customary norms to bribery... it is about money... it is going there'.<sup>937</sup> This suggests that the weakening of the customary norms may also increase the level of bribes in rural courts in the near future. In the early period of transition (1990-97) people 'used family ties more frequently to influence judges and the appearance of bribes in rural courts was rare'.<sup>938</sup>

### **Prevalence of Corruption in the Higher Courts**

Now I turn to explain why the level of bribes is higher in the appeal courts and the High Court and how this has influenced the level of payments offered to be promoted in these courts. Chapter 4 demonstrated that some of the symptoms of judicial corruption in Albania are lack of transparency, vague laws and uncertainty about the legal doctrine. It should also be mentioned that the alternative dispute resolution is inefficient at best (Kallfa and Sulstarova 2011). Buscaglia and Dakolias (1999) argue that all these factors increase the concentration of power in the hands of judges and give them a monopoly over court services. This has returned the judiciary to what Shleiffer and Vishney (1993:606) call a 'joint monopolist agency' model. Shleiffer and Vishney (1993:606) argue that the 'joint monopolist agency' is where the output depends on the service of different departments within the public agency or different agencies that are involved in the output of one public service.<sup>939</sup>

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ownership of the land was determined here before, no written document existed, this was the culture,...just saying this is my land and this is yours, and everybody knew..so, if they had a dispute they asked the committee of elders to solve it...' Interview with urban judge no.5, 2010.

<sup>936</sup> To illustrate, if someone accuses a neighbour of having robbed his household without any clear evidence, the dispute will be resolved if the accused finds twelve reputable local individuals called 'Betar' selected by both parties plus the priest (or for Muslims, 24 people) who will testify (give an oath) that the accused didn't commit the crime.

<sup>937</sup> Interview with rural judge no.1, 2010.

<sup>938</sup> Interview with rural advocate no.2, 2010.

<sup>939</sup> Shleiffer and Vishney (1993:605) offer the example of a builder who needs different permits from the police, fire and water authorities. They argue that in these circumstances the competition between several departments within the agency for the bribe can influence the market price of the bribes within that agency.

In the context of my study, different departments within the agency represent all levels of courts and the output is the court decision. The cost of the output will depend on whether the case will be appealed and if it has been successful in Appeal or the High Court. While each of the instances of the courts acts as an independent department within the agency, there is competition between all courts' levels that somehow influences the bribe's level at the first instance courts and appeal courts. Interviewed advocates noted that judges of the first instance courts ask for 'smaller payments than those of appeal courts and judges of the High Court'.<sup>940</sup> The former bear the risk that the decision may be returned down or acquitted by the High Court. The cost of a returned case to either the judge of the first instance court or the appeal courts is also higher than that of the High Court because 'the ratio of returned cases from appeal or the High Court to lower courts is one of the indicators of professionalism which is taken into account by the HCJ in the promotion of judges'.<sup>941</sup> The higher the number of returned cases, the lower the score of professionalism of the judges.

In addition, judges of the High Court are immune from inspections by both the HCJ and the MOJ. So the cost of potential prosecution for corruption to a judge of the High Court is almost zero<sup>942</sup> while reward from the bribes is very high. The Shleiffer and Vishney (1993) model suggests that the increase of returned cases by appeal courts and the High Court to the first instance courts in the last decade is related more to competition for bribes rather than for legal reasons. As I showed in Chapter 4, several judges of first instance courts highlighted that they were overwhelmed with 'the increasing number of returned cases from appeal courts and the High Court and by poor reasoning or contradictory arguments [i.e. different rationale for similar cases] provided by these courts'.<sup>943</sup>

The high revenue generated by the collection of bribes with minimal costs for being prosecuted for corruption seems to have increased the demand of judges to be promoted to appeal courts, and the High Court. This explains why the value of bribes paid by judges to be promoted to appeal courts is at least two times higher than the payment offered to be promoted to 'career courts'.<sup>944</sup> The amount to be appointed to the High Court is at least five times higher than that offered to be promoted in 'career courts', and two times higher than that offered to be promoted in appeal courts.<sup>945</sup> This mechanism of collecting bribes (i.e. appeal of cases by the higher courts to lower courts for profit and not for legitimate reasons) is another explanation in addition to that made earlier in the 'democratic legitimization of law' section for why the majority of my interviewees rated judges of appeal

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<sup>940</sup> Interview with urban advocate no.7, 2011.

<sup>941</sup> Interview with urban advocate no.7, 2011.

<sup>942</sup> Interview with rural judge no.2, 2010.

<sup>943</sup> Interview with rural judge no.2, 2010. According to interviewed urban advocate no.2, the number of unified decisions (i.e. which are intended to unify the legal practice) issued by the High Court has decreased in the last two years which shows 'the lack of will by the High Court to avoid contradictory legal interpretations'.

<sup>944</sup> Interview with international observer no.2, 2010.

<sup>945</sup> My interviewees provided more or less the same figures to those of Global Integrity Report (2010) 'Global Integrity Report: Albania, 2010', Washington DC; available at <http://www.globalintegrity.org/report/Albania/2010/> [accessed July 11, 2011].

courts and especially of the High Court as the most corrupted category of judges in the system.

## **Competition between Judicial Corruption and Organised Crime**

The majority of interviewed prosecutors and advocates suggested that the low cost of prosecution and widespread use of bribes in the judiciary explains 'the decrease in the violent patterns of interplay between organised crime and judicial corruption after 2005'.<sup>946</sup> It may also explain why judicial corruption moved from 'criminalisation' to 'market-oriented' corruption. The theory of 'property-rights of mafia emergence' argues that Mafia-like organised crime (i.e. offering protection of property rights) can emerge in transitional countries that follow a rapid political-economical transition from one governing system to another, where the distribution of property rights increases because of privatisation, and as a result demand for protection rises. In a situation where laws are ambiguous and enforcement of the law is weak, people look for informal ways to enforce their rights which gives rise to mafias (Varese 2012).

The majority of my interviewed prosecutors dealing with serious organised crime confirmed that 'during 1996-99 when the state almost collapsed, the protection of property rights was dominated by local organised crime groups which monopolised this service by extending their direct influence to courts and state police'.<sup>947</sup> But as the state strengthened after 2000, the rapport changed and the market of supply and protection of property rights became more competitive. Other public actors (corrupt state police, judges, prosecutors, bailiffs) and private actors (private police and private bailiffs) entered the market. The demand for protection by organised crime decreased.<sup>948</sup>

A few interviewed prosecutors and advocates dealing with organised crime noted four factors that may have diminished the role of organised crime in supplying and offering protection in the last decade: first, other criminal activities (such as drug trafficking) have become more cost beneficial than the business of protection;<sup>949</sup> second, people are more willing to pay bribes to a corrupt official than to organised crime because the former is not violent and is easier to denounce for corruption, as a last resort, if he does not keep his promise.<sup>950</sup>

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<sup>946</sup> Interview with urban advocate no.4, 2010.

<sup>947</sup> Interview with prosecutor no.4, 2010.

<sup>948</sup> Interview with investigative journalist no.2, 2010.

<sup>949</sup> Interview with urban prosecutor no.3, 2010.

<sup>950</sup> In 2012 one citizen accused a high profile police officer in Tirana after being disappointed that the corrupt police officer asked him for more money to close the investigation than they formerly agreed. *Panorama Gazette* (2012) 'Corruption, closed files with money, the chief of police in handcuffs' (Korrupsioni, mbyllte dosjet me para, shefi i policise ne pranga), April 17.

Third, customary norms such as vengeance and blood feuds are 'still influential in rural areas, and informal protection offered by organised crime which is often violent can produce victims'.<sup>951</sup> According to Becker (1968) the cost of crimes bearing victims are generally more expensive because family members of the victims will follow up with revenge on organised crime. This will increase the cost of protection for organised crime when violent crimes such as vengeance and blood feud occur. Fourth, many high-profile organised crime groups are entering legal businesses and they too prefer public institutions *de jure* to resolve their disputes with other legal businesses.<sup>952</sup>

Organised crime's move away from the supply of protection after 2001 has increased the demand for corrupt judges and this has raised the price of bribes in the judiciary. It can be said that in a society that is organised through 'clientelist' networks, the increase of judicial independence of a corrupt judiciary increases the bargaining power of the latter in the market of protection and supply of property rights.

However, the situation is not the same in rural areas where customary norms are still strong and big families continue to exert control in their own territories. Although in decline as a phenomenon, 'there are still big families in rural areas who offer protection to businesses in their community to keep their reputation high and generate income'.<sup>953</sup> Other interviewed advocates and prosecutors in rural areas pointed out that the situation is improving.<sup>954</sup>

I also argue that the 'monopolistic' behaviour of the judiciary increases the cost of accessing courts and this raises the opportunity for the powerful elite and organised crime, which have the financial means, to influence the judiciary and distort its role in delivering justice to society. So while a corrupt judiciary can minimise organised crime's role in offering supply and protection of property rights in societies where corruption is rampant, it does also increase the chances of organised crime accessing courts and forming 'clientelist' networks with corrupt judges.<sup>955</sup>

Contrary to Gambetta (1993) who sees organised crime as a competitor of the judiciary (true during the civil unrest in Albania), in societies where corruption is endemic, my findings suggest that this relationship can change with the strengthening of the state, and corruption can serve as a link between corrupt judges and organised crime.<sup>956</sup> The former offers bribes and protection, and the latter offers access to both the court system and its services. On the other hand, HPOC offers access to judges for promotion via its links with the political elite and high profile judges, and the latter, in return, favour HPOC when the case comes into their court. The 'clientelist' framework also explains how the networks of the 'Mafia bourgeoisie' are established.

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<sup>951</sup> Interview with rural advocate no.2, 2010.

<sup>952</sup> Interview with urban advocate no.3, 2010.

<sup>953</sup> Interview with rural prosecutor no.3, 2010

<sup>954</sup> Interview with rural prosecutor no.4, 2010.

<sup>955</sup> Interview with urban advocate no.2, 2010.

<sup>956</sup> See also Weng, P. (2012) 'Mafia Emergence and Transplantation: a Modified Framework for Understanding the Economic Theory of the Mafia', unpublished.



## Social Control Conditions

Social control theories suggest another set of conditions which help to understand the roots of judicial corruption from a different prospect. In the context of this study, the role of successive changes of the court structure is considered as another legacy condition that has diminished the society's trust in the courts. The poor social status of judges is also argued to be a particular social condition for corruption. Claims for a better social status in society have pushed judges to succumb in their subculture and to justify their corrupt behaviour. The asymmetrical role of customary norms to judicial corruption is also noted and explained.

Social control theories argue that causes of delinquency are strongly influenced by social factors rather than by institutional ones. Society is seen as a system of shared values embraced by its individuals bonded together and integrated into the same social system which Durkheim (1964:73) called solidarity or 'collective consciousness'. The disruption of the social bonds between members of the society and their community (i.e. solidarity) has disorganised society and as a result 'anomie' (i.e. lawlessness) has been created. Durkheim (1964) argues that one of the main factors in the anomie is the transition of society from 'mechanical' (pre-industrial) societies to industrial 'organic' societies.

In similar theoretical settings, Sutherland (1934) suggests that contemporary factors such as rapid transformation of law, free market policies, urbanisation, and individualism may disrupt social control and weaken social institutions such as family, friendship, church and neighbourhood. Individuals will then be thrown into informal forms of relationship and this will erode the role of government institutions. A tension between social institution and formal institution may be formed and institutions disorganised. Sutherland (1934) considers institutional disorganisation as one of the main causes of delinquency and argues that 'such disorganization fosters the cultural traditions and cultural conflicts that support such activities' (Jensen 2003:2).

### Disruption of Legal Culture and Control

This study argues that institutional disorganisation has happened consistently throughout the modern history of Albania (i.e. 1912-2011). Several political and economical factors have played a significant role in constructing an uncertain environment where the weakening of social institutions (customary norms) has increased and where, on the other hand, the building of solid, credible and functional Western-like institutions (formal institutions) based on the rule of law seems to have struggled<sup>957</sup> (Anastasi 2007). The parallel existence of two weak institutions – social and official – has created normlessness or anomie of both modern law and customary norms. Judges are persuaded by 'bribes,

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<sup>957</sup> Interview with academic no.1, 2010.

social pressure or powerful elites rather than by the law in their decision-making'.<sup>958</sup> In short, both social and official institutions are not taken seriously by people and this has opened gaps for corruption. There have been several factors that have undermined the legal culture and influenced society's negative perception of the role of courts.

Successive changes of a governing system in short periods of time could be one of the main conditions.<sup>959</sup> The years 1912-39 could be called a period of swift change of governance and court structures. While the governing system changed five times, the court organisation changed at least seven times in only 27 years – 1912, 1913, 1914, 1921, 1923, 1925, and 1929 (Nova 1982). Albania was governed by an emergent government (Government of Vlora) (1912-14); a foreign monarch under international protectorate (1914-21); a parliamentary monarchy with a collegial body playing the role of King (1921-24); a parliamentary republic (1924-28); and a parliamentary monarchy (1928-39) (Anastasi 2007). The change of both court structures and laws from the Ottoman law to European civil law countries' model created uncertainty among the community of judges and society at large which were familiar with the Ottoman law (Elezi 1999: Nova 1982:70).<sup>960</sup>

The confusion of judicial models was another distinctive factor during the period 1912-39. In 1919, the executive was not clear what law to follow (Ottoman or modern),<sup>961</sup> and what court tariffs to apply<sup>962</sup> in opening the new courts. The discordance of the governing system between that applied by the book and that applied in reality was also very problematic. From 1924 to 1928 the governing structure was a monarchy *de jure* but in practice it worked as a parliamentary republic (Anastasi 2007:67; Brozi 2007:344). This created a conflict among the political elite on how participation in law-making should work, something that undermined the democratisation of the institutions.

The overlapping of legal systems is another influential factor to be considered. It became a concern in 1912-29. While at the central level the governing structure was similar to European civil law countries, at the local level the administrative law was still Ottoman (Anastasi 2007:43). In the late 1920s the Penal Code (1928) was copied from Italy and the Civil Code (1929) adopted partly from German and Austrian models (Nova 1982:76-83).<sup>963</sup> The procedural law (i.e. civil and penal) however, was still based on Ottoman law. So this contradictory legal system, where people in local areas were following a different law from that at the central level, confused society more and weakened its relationship with the courts.

Uncertainty over what legal school and legal terminology to apply were other potential factors that harmed legal tradition. Many judges had problems with the new terminology as many were educated in a different system from that which they were working with (in

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<sup>958</sup> Interview with investigative journalist no.2, 2010.

<sup>959</sup> Interview with urban judge no.2, 2010.

<sup>960</sup> Albanian National Archive, File no.I-76, 1923.

<sup>961</sup> Albanian National Archive, File no.I-8, 1919.

<sup>962</sup> Albanian National Archive, File no.II-1, 1919.

<sup>963</sup> Several laws, such as the Penal Code, Procedural Code and Inheritance Law, were copied from Italian legislation and were prepared by an Italian expert called Giulio Mezinger di Presenthal who was hired by the Albanian government from 1925. Albanian National Archive, File no.I-117, 1925.

1912-20 most of them were educated in the Ottoman law schools and were practising civil law model courts – some of them had problems with the Albanian language) (Elezi 1999:33).<sup>964</sup> While after 1925 the situation improved, because many students went to Western schools, there were still problems with the legal interpretation because legal terminology was still Ottoman law. In the period 1928-39 judges who did not know the Ottoman language were not able to work.<sup>965</sup> The situation became baffling in 1938 because neither the judges nor the people were familiar with the new ‘modern’ laws<sup>966</sup> and people were incriminated for issues that had not been considered crimes before. This may have been another factor that influenced people’s negative perception of the courts and laws.<sup>967</sup>

Inconsistent application of the ‘modern’ court system throughout the country was another factor that contributed negatively to the enhancement of legal tradition and society’s perception of the courts. There were areas such as the hinterland in the North (including the cities of Puke, Malsi e Madhe, Dukagjin and Kosovo) that had a different court system (i.e. Commission of Xhibal) from the rest of the country and that applied the ‘Kanun’ (Elezi 1999:22). This created a clash of jurisdiction in the North between the ‘modern’ judicial system applied in the cities and the Commission of Xhibal working in the hinterland. Often, highlanders committing crimes in the city would not accept being tried in the ‘modern’ courts.<sup>968</sup>

The Kanun was only codified in 1933 and for the period 1912-33 the Commission of Xhibal (founded in 1858) often abused applying the norms and their interpretation because the Kanun was not written anywhere until 1933 but transmitted orally to the people (Durham 1994). Another concern was that cases going through the Commission of Xhibal limited the right to appeal because the decisions of the Commission of Xhibal were not appealed in the ‘modern’ courts.<sup>969</sup> Judges of the ‘modern’ courts had little knowledge of the Kanun and those of the Commission of Xhibal knew little about ‘modern’ law.<sup>970</sup> Judges were unhappy and confused in 1928 when the Albanian King Zog reinforced the jurisdiction of the Commission of Xhibal and recognised that all conflicts related to inheritance in the hinterlands of the Northern district (i.e. Shkoder, Diber and Kosovo) should be resolved under the Kanun of Leke Dukagjini and Kanun of Skanderbeg (Nova 1982:83).

So the successive change of the court system and laws described above allowed judges to abuse and manipulate, with the confusion of the terminology and laws.<sup>971</sup> Thus judicial corruption flourished in the court system and legal tradition seems to have been marked by

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<sup>964</sup> Albanian National Archive, File no.II-56, 1921.

<sup>965</sup> Albanian National Archive, File no.II-600, 1937.

<sup>966</sup> See official letter no.3543, October 13, 1939 at Albanian National Archive, File no.II-435, 1930.

<sup>967</sup> Albanian National Archive, File no.II-634, 1938.

<sup>968</sup> See official letter no.117, dated May 12, 1920 written to the Ministry of Justice by the Court of Appeal of Shkoder. Albanian National Archive, File no.II-23, 1920.

<sup>969</sup> Albanian National Archive, File no.II-355, 1928.

<sup>970</sup> Albanian National Archive, File no.II-510, 1933.

<sup>971</sup> See Inspection Act of the Court of Kavaje in 1919 at Albanian National Archive, File 155.

a negative perception by society.<sup>972</sup> I explain below that similar consequences of the change of the courts' structure and laws continued even during communism and the transition to democracy.

We see similarities between the symptoms of judicial corruption today and those evidenced in 1912-39, such as poor reasoning,<sup>973</sup> breach of due process,<sup>974</sup> nepotism,<sup>975</sup> lack of professionalism,<sup>976</sup> poor infrastructure,<sup>977</sup> and, lack of courts in the hinterland.<sup>978</sup> It is interesting to note that in one Inspection Act of the courts in 1938, among some of the problems found in the court system, the most distinguishing one was the adaptation of judges to the culture of allowing cases to be postponed for long periods. The judicial inspector of that time labelled it as a 'gangrene of our court system'.<sup>979</sup> This pattern continues to be a concern even today. In 2011 around 50% of the civil cases tried in the biggest court of the country, the First Instance Court of Tirana, were postponed.<sup>980</sup>

As mentioned earlier, the change of court structure and its implications for the legal tradition continued even during the communist period.<sup>981</sup> From 1944 to 1989 the architecture of the courts changed several times (1945, 1946, 1951 and 1968) and the law applied was transplanted from overseas – the Communist Soviet Law (1946-60).<sup>982</sup> The institution of the advocacy was abrogated in 1961 because it was considered a mechanism of the Western ideology of the rule of law (Nova 1982:132). Again the change of the court system generated many problems. One of the characteristic consequences of the rapid change in 1946-61 was the judges' poor knowledge of law and their 'lack of understanding of the institutions of civil law'.<sup>983</sup> Western educated judges familiar with the 'old' system

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<sup>972</sup> See the inspection act of the court of Peshkopi in 1935 at Albanian National Archive, File no.II-568.

<sup>973</sup> See documents of the Court of Lushnje, December 5, 1919, at Albanian National Archive, File no.1-20, 1919.

<sup>974</sup> See the Inspection Act of the Court of Elbasan in 1921 at Albanian National Archive, File no.I-40, 1921.

<sup>975</sup> See the Inspection Act of the Court of Gjirokastra in 1930 at Albanian National Archive, File no.II-442, 1930.

<sup>976</sup> See Inspection Acts no.5 and 6, of the Court of Vlora, September 15, 1926, at Albanian National Archive, File no.II-263, 1926.

<sup>977</sup> See the concerns of the Court of Korca in 1924 at Albanian National Archive, File no.II-164, 1924.

<sup>978</sup> See the requests of both the provinces of Mat and Gjakove (Kosovo) in 1924 at Albanian National Archive, File no.II-220, 1924.

<sup>979</sup> See Inspection Act no.83/VII, December 7, 1938, p.1, Albanian National Archive, File no.II-634, 1938.

<sup>980</sup> See Lombard, P. and Stienstra, D. (2011) 'The Use of Courtrooms at the Tirana and Durrës District Courts', USAID Albania, Final Study Report, p.11.

<sup>981</sup> It should be remembered that Albania was invaded by Nazi fascists during 1939-44 but apart from a few changes to civil and criminal procedures, the same court system remained. The only new court opened was a Military Court controlled by the high ranking officers of the Italian army and Nazi Germans in 1944 (Nova 1982:89).

<sup>982</sup> Albanian National Archive, File no.18, 1952.

<sup>983</sup> Albanian National Archive, File no.22, 1963.

claimed in 1948 that they 'did not know how to deal and how to act with the [communist] laws' (Pashko 1948:61).

Even during the transition to democracy, most of the interviewed judges for this study suggested that legal inconsistency and the change of court structure affected the quality of the judiciary and produced similar outcomes of judicial corruption with those of the past.<sup>984</sup> As mentioned in Chapter 4, for the period 1990-98, Albania was governed by a presidential republic system and applied a three-tier court system: (1) first instance, (2) appeal courts and (3) the Court of Cassation (similar to the French model).

During this period there was a series of successive changes of law that affected the organisational structure of the judiciary: the Law on Main Constitutional Provisions 1991 (establishes the separation of power, immunity of judges, HCJ, Constitution Court); Law on Organisation of Justice 1997 (details the organisation of courts in the three-tier system, stipulates the role of judges and prosecutors in the court process, and also introduces the accountability of judges and prosecutors); Albanian Constitution of 1998 (constitutes the separation of powers, immunity of judges and other aspects of the due process); Law on Judicial Power 1998 (prosecution office is separated from the courts, becomes independent, and removed from the umbrella of the HCJ) (Pregja 2008).<sup>985</sup>

The 1998 Law,<sup>986</sup> which was amended five times until the current Law on Judicial Power 2008,<sup>987</sup> has also changed the model and the composition of the courts. The model of the High Court and the Constitutional Court were adopted from countries which had a different governing system (Federative) from Albania (Unitarian). The Court of Cassation changed to the High Court, imitating somewhat the US model of the Supreme Court. The model of the Constitutional Court was copied from the German model (Toro 2001).

The adopted contradictory judicial models have further 'confused judges about what legal doctrine to follow and this has opened up gaps for abuse and misinterpretation of the law'.<sup>988</sup> The majority of the interviewed judges pointed out that contradictory interpretation of law by the High Court is one of the sources of judicial corruption because 'judges of the first instance or appeal court are not certain what decision of the High Court to take as a reference'<sup>989</sup> and this gives judges a level playing field to abuse.

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<sup>984</sup> Interview with urban judge no.2, 2010.

<sup>985</sup> Interview with rural judge no.10, 2010.

<sup>986</sup> Some administrative aspects of the court organisation were also made so the assistant judges were also removed from the system, the chief secretary who was the same rank as the Chancellor of the Court was introduced. The opening of special courts was also introduced for the first time which allowed the opening of Serious Crimes Courts in 2004 and of the Administrative Court which is still in process. The 1998 Law has been amended at least five times (1999, 2000, 2001, 2003 and 2008) (Pregja 2008:63-78)

<sup>987</sup> The 1998 Law was amended in 1999, 2000, 2001, 2003 and 2008 (Pregja 2008:68).

<sup>988</sup> Interview with urban advocate no.3, 2010.

<sup>989</sup> Interview with rural judge no.2, 2010.

Mixing different European civil law countries in preparing Albanian laws has influenced their quality. As an example, the Penal Code was amended at least 19 times<sup>990</sup> between 1990 and 2009, while the Tax Law was changed 65 times in the period 1990-2011. Some interviewees claimed that defective laws give a wide discretion to corrupt judges to speculate and abuse legal terms. As one advocate put it, 'flawed laws have always been a weapon of corrupt judges, because laws are badly formulated, poorly translated from Western models, and they lack contextualisation with the Albanian reality'.<sup>991</sup>

The mixture of the different legal cultures has weakened the quality of law and this has also been an avenue for judicial corruption.<sup>992</sup> While there are no records showing from which models the Albanian Codes were copied, the majority of my interviewees suggested that the Criminal Code is a mixed adaptation of French and Italian models whereas the Procedural Criminal Code was mostly borrowed from the Italian experience.

The Civil Code is copied from the French and Romanian models. And the Administrative, Labour, and Commercial codes are adopted from a cocktail of Swiss, German and Portuguese versions.<sup>993</sup> The mixture of different legal experiences confuses judges because they 'find it difficult to understand the purposes of certain procedural devices'<sup>994</sup> such as the 'summary trials'<sup>995</sup> (i.e. if the accused admits the offence before the trial, a third of his sentence will be redeemed) which are still questioned in the literature for their implications on the due process and criminal justice policies generally (Ashworth and Zedner 2007; Newburn 1995). Some of the adopted laws are 'even outdated in their home countries'.<sup>996</sup>

To sum up this argument, my data collected for the period 1912-2011 suggest that successive changes of governing system, court structure and rapid amendment of laws has undermined legal tradition, has negatively influenced society's perception of the courts and this has created favourable conditions for corrupt judges to exploit the justice system. As one judge put it, 'one of the main reasons for judicial corruption is the lack of a cohesive legal system and a disrupted legal tradition. It has always been attempted in our legal

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<sup>990</sup> Interview with academic no.1, 2010.

<sup>991</sup> Interview with urban advocate no.1, 2010.

<sup>992</sup> Interview with urban advocate no.6, 2010.

<sup>993</sup> Interview with urban judge no.2, 2010.

<sup>994</sup> Interview with urban advocate no.3, 2010.

<sup>995</sup> '...we find it difficult to understand the purposes of certain procedural devices such as the "summary trials"... these trials are a special kind of judgment which is aimed to be beneficial to the criminal justice system, and indirectly beneficial to the defendant...but truly, based on my extensive experience as an advocate working with criminal cases, judges do take bribes on these cases... because accepting the "summary trial" for an offence which is punishable by 9 years in prison will automatically deduct 6 years...it's a very high margin of discount on the penalty...and both judges and parties play with it...it is a mechanism which is increasing the level of corruption in the judiciary...' Interview with urban advocate no.3, 2010.

<sup>996</sup> Interview with urban advocate no.3, 2010.

tradition to import laws from other legal and cultural realities of European models but the process has been artificial.<sup>997</sup>

## Judicial Quest for Status

Another factor suggested by my data was the impact of low social status of judges on judicial corruption. Initially I thought that in societies derived from a communist system and where the class difference was not of great concern, the disparity of social status would not have been a major factor in corruption. However, as I show below, in post-communist societies where the role of customary norms is still powerful (i.e. kin societies),<sup>998</sup> low social status<sup>999</sup> plays a significant role in weakening or strengthening the self-control of a judge against corruption.

Reckless (1967) argues that individuals are influenced by internal and external factors known as 'social pressure' – such as lack of opportunity, poor living conditions, low social status, aggression or hostility – which 'pushes' or 'pulls' someone to contain or surrender to the criminal environment (Jones 2006:288). The majority of the interviewed judges claimed that they had a poor social status in society. They also pointed out that 'a fair social status would be a moral barrier for judges to not socialise with the litigants or third parties and avoid *ex parte* meetings, as this would undermine their prestige in society'.<sup>1000</sup> A few interviewees speculated that the political elite wishes to keep the profile of judges low as this helps the political elite control and manipulate judges easily.<sup>1001</sup> This may be another explanation as to why the executive resists increasing the budgets of courts, something that would help improve the status of judges.

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<sup>997</sup> Interview with urban judge no.1, 2010.

<sup>998</sup> According to Wolf (1966:7) 'kin societies' are those in which family plays a multi-task role such as the 'usual functions of economic provisioning, socialization, the exchange of sexual services, the bestowal of affect...in small units of output and in quick succession, with a relatively low cost and overhead'. Wolf (1966:2) conducted his fieldwork in countries with similar cultural characteristics to Albania such as Latin America and European Mediterranean.

<sup>999</sup> Social status is defined as 'the relative rank that an individual holds, with attendant rights, duties, and lifestyle, in a social hierarchy based upon honour or prestige'. For more see Encyclopædia Britannica Online, Academic Edition, 2012; available at <http://www.britannica.com/EBchecked/topic/551450/social-status> [accessed April 24, 2012].

<sup>1000</sup> Interview with urban judge no.7, 2010.

<sup>1001</sup> '... the political elite want to keep the profile of judges low, and this is key for the reputation of the judiciary before the public... they (political elite) do not make an effort to protect the judiciary but instead work to denigrate it. And this has a very negative impact on the community of judges generally and especially honest ones... a respectable social status of judges in public is very significant...it is important for judges and the public to see how the state respects the judiciary...'Interview with urban judge no.5, 2010.

As I showed in Chapter 4, judges dealing with cases of serious organised crime groups felt unprotected<sup>1002</sup> and criminals, even in the courtroom, often threatened them.<sup>1003</sup> So my data suggest that judges seek alternative ways such as bribes or support from the powerful elite, family or friends to maintain their high social status and this makes them socially dependent.<sup>1004</sup> One of the judges revealed that once, when the media speculated that ‘he was threatened by criminals, the whole family was organised back home in around ten cars [40km away from the court] and came immediately to offer him protection’.<sup>1005</sup> This judge made clear that it was his family that reacted immediately, and not the state.

Social status was a concern even among the community of lawyers. Many interviewed judges and advocates in both urban and rural courts were not happy that the majority of judges were coming from the hinterland and not from urban areas. According to them this fact weakens the reputation of the judiciary in public as people will ‘perceive the judiciary as an institution represented by individuals who are using the institution as a form of integration with the hierarchy of society rather than as an institution that delivers justice’.<sup>1006</sup> As shown in Chapter 5, some judges and advocates noted that judges coming from the hinterland were more vulnerable to social pressure because they would use their decision-making to satisfy both the powerful elite and organised crime, in exchange for the latter’s support to improve judges’ status in society.<sup>1007</sup>

So the ‘integration’ paradigm could be another factor which facilitates the formation of ‘clientelist’ networks between corrupt judges and organised crime. ‘Clientelism’ is not only based on the commercial benefit but also on other non-monetary favour exchanges such as access to the political elite (Della Porta and Mèny 1997). In addition, the ‘integration’ argument provides another explanation for the formation of the ‘Mafia bourgeoisie’ where to integrate with the superstructure one needs to use contaminated ‘clientelist’ networks and cede from ethics.

Another concern revealed in my data was the social disparity among the community of lawyers. This is something that ‘affects the behaviour of judges in and out of the courtroom and this may push judges to underestimate the reasoning of colleagues, the arguments of the prosecutor and the defence of an advocate, and this may make judges biased’.<sup>1008</sup> I discovered a tension between the prosecutor and judges which lay in the assumption that

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<sup>1002</sup> Interview with urban judge no.4, 2010.

<sup>1003</sup> In April 2012 one of the most notorious criminals, Dritan Dajti, accused of killing four agents of the special forces, threatened judges of the first instance of the Serious Crime Court during the trial. See *Panorama Gazette* (2012) ‘Dritan Dajti threatens and insults judges of Serious Crime Court’ (Dritan Dajti kercenon e shan Krimet e Renda), April 3.

<sup>1004</sup> Interview with rural judge no.3, 2010.

<sup>1005</sup> Interview with urban judge no.5, 2010.

<sup>1006</sup> Interview with rural advocate no.2, 2010.

<sup>1007</sup> Interview with rural advocate no.1, 2010.

<sup>1008</sup> Interview with urban advocate no.1, 2010.



‘judges pretended to have a higher social status than the prosecutors in the justice system’.<sup>1009</sup>

According to a few of the judges and prosecutors this class differentiation ‘stems from the School of Magistrates where students with high grades are selected to become judges and those with poorer grades to become prosecutors’.<sup>1010</sup> In addition, in urban courts both judges and prosecutors felt they had a higher social status in society compared with advocates, for exactly the same reason (i.e. differences in professionalism). Interviewed advocates noted that they ‘did not feel they were being respected enough by judges and were often despised by them’.<sup>1011</sup> I visited some of the coffee shops frequented by judges and advocates in both rural and urban areas and realised that judges were always sitting together, in luxury coffee shops, which were not exposed to the public and not attended by advocates.

In contrast, advocates frequented cheaper coffee shops and often sat with litigants. The reasons given by the interviewed judges for this distinction were, first, to avoid socialising with advocates and litigants in the public as this would have been against the ethics and, second, to maintain a high prestige in front of common people.<sup>1012</sup> Another aspect of social status was the difference between urban and rural judges. Rural judges felt like second-class citizens compared with their counterparts in urban courts. As one rural judge told me, ‘when we sit with our colleagues from urban courts we have to lie sometimes about our incomes and show that our economic status is as good as theirs which in fact it’s not’.<sup>1013</sup> According to my observations, many ‘Magistrate’ judges were sceptical *prima facie* of the decisions of the ‘Non-Magistrate’ judges because the former thought that they were more qualified.<sup>1014</sup>

Social status was also one of the factors as to why judges discriminated against litigants from the Roma community.<sup>1015</sup> We saw in Chapter 5 that there is no judge in the Albanian judicial system representing this community. While the social status of judges was a concern in the general community of lawyers, this was more evident in rural courts. As I showed in Chapter 5, non-local judges coming from the hinterland were perceived as ‘being more vulnerable to corruption because of their lack of knowledge of the community’.<sup>1016</sup>

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<sup>1009</sup> ‘...I do not believe that judges avoid socialising with advocates and prosecutors in public because they are afraid of being misunderstood by society...in reality judges pretend to have a higher social status than the prosecutors in the justice system...they use advocates and prosecutors rather than treating them in a friendly way...’ Interview with rural prosecutor no.3, 2010.

<sup>1010</sup> Interview with rural judge no.10, 2010.

<sup>1011</sup> Interview with urban advocate no.7, 2011.

<sup>1012</sup> Interview with rural judge no.7, 2010.

<sup>1013</sup> Interview with rural judge no.5, 2010.

<sup>1014</sup> Interview with urban judge no.7, 2010.

<sup>1015</sup> Interview with rural judge no.10, 2010.

<sup>1016</sup> Interview with rural advocate no.2, 2010.

However, one positive aspect of social status which was evident in the rural courts, was that judges coming from respectable families ('Dere e Madhe') were more likely to refrain from accepting bribes in order to protect the good name of their family in the community. As one judge said, 'If I accept a bribe I have something to lose which is the good name of my family and this is a very important factor that keeps me away from both bribes and socialising with people with bad reputation in the community.'<sup>1017</sup> One of my more interesting findings relates to the influence of judicial subculture – discussed in the following section.

## Judicial Subculture and Deviant Elements

The subculture of judges provides another perspective in understanding the changing dynamic of judicial corruption from 'criminalisation' to 'market-oriented'. Merton (1968) argues that subculture is a consequence of anomie where individuals who lack institutional means to integrate into society follow deviant forms. Cohen (1955) explains the rise of subculture as a cultural solution of disfavoured categories of society to problems created by social structure where values of the powerful class shape the society (Downes and Rock 2007:126). Therefore, vulnerable groups form their own subculture and develop deviant patterns, which are legitimate to their subculture but are not accepted by the dominant culture (Jones 2006:180). As I mentioned earlier, the increased independence from politics has given more space to judges and we see that after 2001 corrupt judges 'drift' between law-abidance and corruption (Matza 1964). To justify their deviant acts and content themselves that what they are doing is not wrong, corrupt judges have formed what Sykes and Matza (1957:664) call 'techniques of neutralisation'.

In this respect I argue that corrupt judges have developed their own subculture, to justify their corrupt activities, improve their *status quo* or advance upward in the hierarchy of society (mostly judges of the first instance rural courts).

My data suggest five patterns of judges' subculture:

First, almost all my interviewed judges provided similar reasons for why society has a bad perception of judges. As shown in Chapter 5, the most common reasons given were: (a) the nature of the court process 'may influence people's perception because in a civil case there will always be one losing party and often the latter thinks that they lost because the judge was bribed by the winning party';<sup>1018</sup> (b) the judges' reputation is undermined by 'those unprofessional advocates who manipulate litigants and ask them for money supposedly on behalf of the judges'.<sup>1019</sup> According to most of the interviewed judges this is not true, because 'the advocates take this money for themselves and never tell the judges or give it

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<sup>1017</sup> Interview with rural judge no.2, 2010.

<sup>1018</sup> Interview with urban judge no.9, 2010.

<sup>1019</sup> Interview with urban judge no.2, 2010.

to them'.<sup>1020</sup> This negative attitude of advocates makes parties believe that the judges are corrupt.

Interviewed advocates admitted that there are 'occasions when advocates play this "bluffing" trick' but they disagreed with the opinion of the interviewed judges that this is a phenomenon.<sup>1021</sup> This manoeuvre of the advocates, 'can work only on simple cases where advocates predict that they will win... so on these occasions advocates ask for higher fees from litigants than usual, claiming that a good part of it will go to the judge. In complex cases however, this trick cannot work because it is very difficult for the advocate to predict the outcome of the case.'<sup>1022</sup>

Second, there is a tendency for judges to 'legalise' non-monetary bribes (such as cars, properties, vacations)<sup>1023</sup> given in the form of 'gifts'.<sup>1024</sup> Chapter 5 revealed that most of the interviewed judges saw 'baksheesh' as something acceptable as (a) it is not illegal in principle because a public official can accept gifts with a value of less than 10,000 Albanian Lek (£70) and (b) accepting the gift is a sign of appreciation shown to litigants as the contrary would be insulting and in violation of the Albanian custom.

It seems that 'appreciation' is not only an element of public official subculture in transitional societies, as similar justification (i.e. appreciation) is highlighted by Newburn's study into corrupt police in the United Kingdom, United States and Australia (1999:10). This argument may explain why the High Inspectorate of Declaration and Audit of Assets (HIDAA) expressed concerns as recently as February 2012 about the increasing trend of judges declaring considerable amounts of money justified as gifts, free interest long-term loans and sponsorships.<sup>1025</sup>

In addition, judges also are often 'rewarded' by litigants because they have decided fairly. I discerned that these patterns of subculture were mainly found among judges considered by the community of lawyers as 'good'.<sup>1026</sup> On these occasions the price of baksheesh is smaller compared to that paid to 'bad' judges (i.e. those who ask money in order to favour a party before the decision is made).<sup>1027</sup>

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<sup>1020</sup> Interview with urban judge 9, 2010. According to IDRA (2010), '48.4% of the judges declared that lawyers do approach them outside the court in order to influence decisions. This percentage is 11.2 percentage points higher than in 2009.' See IDRA (2010) 'Corruption in Albania, Perception and Experience: Judges Survey 2010'.

<sup>1021</sup> Interview with urban advocate no.1, 2010.

<sup>1022</sup> Interview with urban advocate no.7, 2011.

<sup>1023</sup> As recently as 2012 the First Instance Court of Fier found two doctors not guilty for accepting a gift because this was not given in cash, although the prosecution claims to have provided clear evidence which showed that both doctors were recorded asking for and accepting cash from their client. See Hoxhaj, E. (2012) 'Corruption: the clash between the prosecution and the court in Fier' (Korrupsioni, perplasje prokurori-gjykate ne Fier), *Shqip Gazette*, March 12.

<sup>1024</sup> Interview with local observer no.1, 2010.

<sup>1025</sup> Mejdini, F. (2012) 'Public officials and judges with expensive free interest loans' (Zyrtaret dhe gjyqtaret, borxhe te majma pa interes), *Shqip Gazette*, February 13.

<sup>1026</sup> Interview urban advocate no.7, 2011.

<sup>1027</sup> Interview with urban advocate no.2, 2010.

Third, this is when a judge favours the accused by giving the lowest charge provided by the law for that offence (e.g. if the law stipulates a prison sentence of between 15 and 25 years, the judge decides to charge the offender with the minimum, 15 years) and the judge gives this biased decision not on legal grounds but because he wants to do a favour. As mentioned in Chapter 5, this pattern is known in the community of judges as a 'favour within the limits of the law'. This mechanism, which is often used when judges are accessed via friendship ties, was practised during the communist period and is applied even today. The majority of interviewed judges saw this widespread pattern as normal.<sup>1028</sup>

Fourth, another evident common pattern is when judges hide their colleagues' mistakes both from the public and from the law enforcement agencies.<sup>1029</sup> This form of secrecy or protection helps them to strengthen their social bond and loyalty to each other and protects them from any possible charge of corruption. The secrecy and inertia of judges toward misbehaviour of their colleagues increases the number of incriminated judges in the system and this makes it very difficult for honest judges to blow the whistle as the latter may risk being alienated. This alliance extends even to prosecutors and this can be another barrier in addition to judges' immunity to investigate judges for corruption.

However, my data also show that solidarity within the large community of judges is only manifest on issues of impunity. In Chapter 4 I showed how different categories of judge – 'Non-Magistrates' and 'Magistrates' – compete to control the distribution of promotion rights through controlling the HCJ and NJC. I also showed in that chapter how corrupt judges used the dissenting opinion mechanism to weaken the position of honest judges in the system.

Fifth, there is a 'silent agreement' between judges and the powerful elite, especially with politicians. Corrupt judges 'will be reluctant to condemn politicians, powerful representatives of the media or organised crime in exchange for not being attacked by them'.<sup>1030</sup> This helps corrupt judges to protect their illegal patterns of enrichment. An invisible alliance between powerful segments of society, including judges, seems to have been formed where all parties are reluctant to fight each other on issues of corruption and anti-corruption rhetoric is used as a facade.<sup>1031</sup> And this phenomenon has undermined judicial accountability. The 'silent agreement' points to another explanation of why the 'Mafia bourgeoisie' is established.

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<sup>1028</sup> Interview with urban judge no.4, 2010.

<sup>1029</sup> Interview with rural judge no.10, 2010.

<sup>1030</sup> 'For me, the judiciary has not been effective in the fight against organised crime and corruption ... in this context the state does not support the judiciary in any way ... a judge who works with high profile cases of serious organised crime travels with no car and no guards, there is no security for them...judges are left in the hands of criminals but also of the economic elite and the media...so judges have to protect themselves and therefore they will be reluctant to condemn politicians, powerful representatives of the media or organised crime, in exchange for not being attacked by them...it seems that there is an agreement between them...a silent agreement...' Interview with urban advocate no.4, 2010.

<sup>1031</sup> Interview with academic no.2, 2010.

## Rethinking the Role of Customary Norms

Another important finding suggested by my data is the asymmetry of the role of customary norms in judicial corruption. In earlier chapters I showed that the role of friendship ties is becoming more important than the influence of political pressure. I have also highlighted that surprisingly, violent norms, such as blood feud, restrain judges from corruption and also 'pull' organised crime to recruit from families under the blood feud. Both corrupt judges and organised crime may enter into conflict with the family members of the victim of the blood feud. A non-violent custom such as the maintenance of the good reputation of 'the family name' 'Dere e Madhe', appears also to have 'pulled' judges from accepting bribes. The reason mentioned was that this will harm the name of the judge's family in the area.

In Chapters 1 and 2, based on the literature, I suggested that regionalism or 'Krahinizem' (i.e. regionalism) can also play a role in judicial corruption, though many interviewed judges argue that this is 'not very significant these days'.<sup>1032</sup> Krahinizem still plays an important role during political elections. There is still a 'political distinction between North and South [based on] networks of families and clans'<sup>1033</sup> (Gërxhani and Schram 2008).

Politicisation of Krahinizem also played a critical part in the rise of armed conflict between criminals during the 1997 civil unrest, 'where many organised crime groups were divided according to the regions – North and South'<sup>1034</sup> (Zogaj 2009). But the role of Krahinizem 'does not seem so influential in judicial corruption in the last decade'.<sup>1035</sup> In contrast, 'the role of friendship networks is very powerful and even more significant than political influence'.<sup>1036</sup>

Initially I assumed that political parties tend to use Krahinizem as a tool to generate votes (Saltmarshe 2000). In this respect the influence of Krahinizem would be echoed in judicial corruption in situations when judges are appointed or promoted by politicians based on their origin and not on their merits. And as a result this could produce regional solidarity where litigants, sharing the same origin as the judge, would ask the latter for favours, assuming that the judge indirectly profited from the litigant's vote. Similarly, criminals and

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<sup>1032</sup> Interview with urban judge no.5, 2010.

<sup>1033</sup> Interview with international observer no.2, 2010.

<sup>1034</sup> Interview with urban prosecutor no.4. 2010.

<sup>1035</sup> Interview with urban judge no.5, 2010.

<sup>1036</sup> '....rather than politics or "Krahinizem"(regionalism)... friendship ties and private connections are more influential today for judges. For me, the role of friendship networks is very powerful and even more significant than political influence. Yes politics interferes in the judiciary but, in my opinion, the most influential actors today on judicial corruption are friends and family members. Even when politicians want to influence a judge sometimes they will use friendship ties.....remember friendship can even convert to money, because you did me a favour I will buy you a car ...this is why friendship ties are becoming so important...' Interview with urban prosecutor no.3, 2010.

politicians can use Krahinizem to influence judges. After data collections, I found out that this paradigm is only partly true, for several reasons.

First, the structure of the selection of judges limits the role of Krahinizem as candidate judges are 'filtered by the School of Magistrates which does not discriminate on the basis of origin'.<sup>1037</sup> Krahinizem can, therefore, be employed only on the promotion of judges. The majority of my interviewees mentioned that this happens but not on a large scale. As one advocate put it, 'Krahinizem has some sort of influence but it is not significant... for instance there were no judges from the North working in the Court of Appeal of Tirana before 2005, but during the last five years there have been only a few judges appointed from that region'.<sup>1038</sup>

Second, the widespread nature of judicial corruption has increased the cost of the promotion and thus 'bribes have become more preferable than Krahinizem'.<sup>1039</sup> So politicians or members of the HCJ would support the candidate judge who offers more rather than the one with whom they share an origin. Krahinizem can become really significant if a consolidated majority (two-thirds) of the members of the HCJ come from the same region, but the majority of my interviewed judges showed that this is not the greatest concern with the HCJ today but lack of transparency and corruption there.<sup>1040</sup>

However, Krahinizem plays a role when judges support each other to get elected in the HCJ or NJC, but even here, 'it is not about the origin, it is about the friendship ties'.<sup>1041</sup> Third, not all judges working in a court are local. Therefore, judges support their colleagues in the election process because they work together in the same court and not because they share the same origin.<sup>1042</sup> And finally this third argument is another explanation why the role of friendship ties is becoming more significant in respect of judicial corruption compared to other customary norms.

Having explained the main factors of judicial corruption in the context of organised crime in Albania I now turn to the conclusion of the thesis. This study concludes by bringing together its main research themes and findings. Implications for policy and recommendations for reform are also discussed, as are ways forward for further research.

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<sup>1037</sup> Interview with rural judge no.10, 2010.

<sup>1038</sup> Interview with urban advocate no.2, 2010.

<sup>1039</sup> Interview with investigative journalist no.1, 2010.

<sup>1040</sup> Interview with urban advocate no.5, 2010

<sup>1041</sup> Interview with urban judge no.3, 2010.

<sup>1042</sup> Interview with urban judge no.3, 2010.

## TRADING JUSTICE: FROM POLITICISATION AND CRIMINALISATION TO MARKET ORIENTED JUDICIAL CORRUPTION

What emerges in this study is a picture of the changing dynamics of judicial corruption in Albania: from politicisation to criminalisation through to a flourishing market based corruption. What appears is a judicial 'entrepreneur' who effectively 'trades' justice. One has to ask whether not only the dynamics have changed but whether corruption has decreased or increased. All evidence is that corruption is on the rise. This study also suggests that institutional social control in the courts is breaking down as a result of constant political and institutional changes. It shows a public unable or unwilling to resist corruption because of distrust, low democratic legitimation and the weakness of civil society. On the one hand then, we have a breakdown of social control on corruption. At the same time, incentives for the mobilization of corruption among judges are growing stronger. Thus the constraints on rising corruption are diminishing.

The objective of the thesis was to analyse and explain the root causes of Albanian judicial corruption in the context of organised crime. I argue that one important condition which has allowed judicial corruption to flourish and interact with organised crime is a generalised lack of trust by society in the justice system. The culture of distrust, it is argued, is a product of successive disruptions of legal institutions and a lack of consolidated democratic culture throughout the modern history of Albania. Patterns of judicial corruption were reproduced during the transition to democracy mimicking the communist past thus diminishing the positive hopes of society for a better perspective of the justice system. So, judicial corruption today is perceived as something malign to the social organism, which recognises its existence and accepts its reality but is not able to apply a cure.

The 'immune system' of society which is composed of institutions such as courts, prosecution, state police and others from civil society and the media which serve to protect people from crime and fight corruption,<sup>1043</sup> is not working because corruption has penetrated the immune system and contaminated its employees. In this context, corrupt politicians, judges, advocates, prosecutors, journalists and intellectuals have formed a criminalised fusion, the 'Mafia bourgeoisie', which operates between individuals and the powerful elite and obstructs the healthy interaction of society with justice and law-making.

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<sup>1043</sup> According to IDRA's 2010 survey, 'Media is perceived by the general public as more corrupt than in 2009 and in 2005' (p.10).

Social institutions too, such as church, family, friendship and neighbourhoods, have been eroded by rapid urbanisation and chaotic market-oriented policies. Society has become disorganised and social control weakened. Thus judicial corruption is embodied in the social fabric and society feels powerless to carve it out. People have lowered their expectations and minimised their hopes of having a fair and independent judiciary. Society has become cynical to both judicial reform and law, and views both with scepticism. A distance between society and courts has been formed. The culture of distrust has pushed people back to their traditional informal ways of dealing with courts such as bribes or customary norms. This situation has increased informality at the expense of formality. Informal mechanisms have become the practical 'formal solutions' while formal institutions are being used as 'legal' dressing to legitimate informal practices (Gërxhani 2004, 2003).

Society, which seems to have become dependent on corruption, has accommodated itself to this informal environment. A collective guilt where everyone feels incriminated but unable to react has served as an informal general amnesty for a society which accommodates corrupt officials. This in turn has weakened the social cost of corruption for judges. The culture of informality has led corruption to flourish in the judicial system and has created opportunities for organised crime and the political elite to establish 'clientelist' relations with the courts. The cost of accessing the judiciary has increased and thus the judicial system seems to be benefiting only the powerful. This has seriously affected the institutionalisation of democracy, due process, and weakened accountability. The justice system is corrupt and judicial corruption has become institutionalised.

This study shows that in post-communist societies the nature of judicial corruption and its interplay with organised crime is very complex. A variety of political, social and economic factors have been taken into account. In Albania intensive transformation has produced different state structures (monarchy, fascism, Nazism, communism, neo-liberal democracy). Due to a myriad of institutional experiences and a cocktail of legal doctrines and ideological backgrounds (e.g. judges educated in communist ideology end up judging in democratic courts), legal institutions seem to have failed to gain acceptance and to establish a democratic legal culture.

I argued that the causes of judicial corruption should be traced from a continuing legacy of the communist justice system which persisted during the transition to democracy. This negative legacy combined with a defective democratic process of law-making, weakened the legitimacy of the judiciary in the public mind. It seriously undermined its capacity to deliver justice as well as protecting society from the administrative ruling of the state.

The political elite has managed to control society via 'clientelist' networks and through limiting the budgets of independent institutions. The social status of judges in society is low. Poor wages and the quality of bureaucracy are some of the factors which contribute to this status. To improve their economic and social status judges look for informal mechanisms such as bribes and exchange of favours. This has allowed corruption to flourish in the judicial system and has created a competitive environment for bribes among levels of the courts.

In a situation where the cost of prosecution for judges of the higher courts (appeal courts, High Court and Constitutional Court) is low, the demand for promotion in these courts has increased and the payment offered doubled. As a consequence, a class disparity between



judges is formed where the most corrupt are at the top of the judicial hierarchy and the less corrupted at the bottom. To improve their social status and strengthen their *status quo* judges have formed a 'social group differentiated from the general public, whose behaviour is more significantly structured by informal norms than by formal rules' (Herbert 1998:343).

It seems that the subculture in this context is expressed internally in relation to each other (i.e. legalising 'Rryshfet'; 'favour within the limits of the law'; protecting each other against prosecution) and externally in relation to other powerful actors such as the political elite, outspoken members of civil society, journalists and high profile criminals (i.e. offering the latter favourable court decisions on criminal and civil matters). This corrupt behaviour of judges has made them unreliable to the public and increased the gap between them. Therefore judicial accountability and transparency toward the public are undermined.

Lack of accountability has allowed judges to create their 'clientelist' networks with litigants and sophisticate their patterns with organised crime. In this setting the increase of the quality of judicial independence has only empowered more corrupt judges and has made them more independent from political influence but it has failed to reduce judicial corruption. Corruption in the courts has become an institutional culture where honest judges find it very difficult to resist as otherwise they risk being alienated and never being promoted. This has increased the number of corrupt judges in the system and given them more power to control key institutions for the judiciary, the HCJ and the NJC.

This study also finds that one of the particularities of judicial corruption in Albania is its dynamic of interplay with organised crime. It can be said that similar patterns can be found in other countries in the Western Balkans. This thesis shows that the dynamic of judicial corruption in Albania is not constant but vibrant and very flexible. The interplay of judicial corruption with the political elite and organised crime takes shape influenced by various political and economic factors. In the early phase of transition to democracy (1990-96), where the change of laws, institutions and the circulation of the elite was chaotic, judicial corruption was more a consequence of political corruption. The judiciary seemed more an extension of the executive. This was associated with a capillary politicisation of the courts where the political elite exerted control in every aspect. The patterns of judicial corruption were very similar to the communist past. The executive controlled the nomination and promotion of judges via defective laws and the so-called lustration law policies. This was the politicisation phase of the judiciary.

The dynamic changed dramatically during the political and financial collapse in 1997 when the state institutions broke down. Immediately local organised crime groups seized power, substituted the role of state institutions, offered protection and managed the supply of property rights. Mafia-like groups emerged. The role of the judiciary and state police was minimal and this helped organised crime to strengthen hierarchical structures and penetrate courts. Links between high profile judges and organised crime were established and this was particularly evident in rural areas. Society turned to violent customary norms to solve the disputes where vendettas and blood feuds were the most preferred forms. Criminalisation of the judicial system occurred.

After 2001, when the state strengthened, the increased quality of judicial independence created an adverse effect on judicial corruption because by that time many judges in the system were already highly politicised and criminalised, and the raising of independence

decreased the cost of prosecution, and chances for judicial corruption improved. Another factor which helped judicial corruption to prosper after 2001 was rapid economic change followed by defective property rights laws. The number of commercial disputes increased and this raised the demand for courts. In the absence of effective alternative dispute resolutions, the judiciary took the monopoly over the supply of property rights.

The bribe became the most popular means of accessing the courts and this affected the relationship between judicial corruption and organised crime, where violent forms diminished and exchange of favours were selected as more preferable forms of connection. Organised crime therefore seems to have established permanent 'clientelist' networks with corrupt judges as this appears to be more cost beneficial. High Profile Organised Crime, which is mostly focused on legal business and has its own access to the political elite, provides access and support to corrupt judges in exchange for favourable court decisions especially in civil cases. In such a situation, patterns of judicial corruption have become sophisticated.

Gradually in the last decade judges have solidified their own social group and formed their subculture to be more protective. The subculture of judges supported by their immunity status has pushed the political elite to refine its patterns of judicial control. We see that after 2005, the executive influences the judiciary from those domains where it still has the power to select and nominate public officials. The executive selects and nominates state police, some key members of the HCJ such as the Minister of Justice, and often even the President of the Republic. It also influences the selection of judges of the High Court and the Constitutional Court. The interaction between the political elite and corrupt judges has gradually shifted to a 'clientelist' relationship and accountability has been undermined. This is the 'market-oriented' phase of judicial corruption where corruption is more driven by greed than by political influence.<sup>1044</sup>

The changing dynamic of judicial corruption and the complexity of its interplay with organised crime has a significant implication for social justice in Albania and its accession to the EU. A corrupt judiciary with close links to the political elite and organised crime erodes the people's trust in the institutionalisation of democracy. It undermines judicial reforms, weakens judicial professionalism and the capacity of the state to fight corruption and organised crime. A fragile judicial system increases the opportunity for foreign criminal networks to be transplanted into the country (Zhilla 2012). A corrupt judiciary hampers the ability of Albania to fulfil its political and economic commitments to the EU Treaty, the so-

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<sup>1044</sup> '...even previously (1990-2001), although now (2010) it is more evident, corruption was seen as a quick mode of enrichment by judges...judicial corruption become something normal, people used to make fun of and tell anecdotes about corrupt judges... it was so open, everything was solved in the court if you could bribe the judge...and it continued this way. Today it has become a phenomenon, a tradition has been formed where justice is easy tradable, it has a price like goods sold in the market, and the political elite are not interested in making the judiciary accountable for corruption because they also are corrupt...so corruption is protected through corruption...'  
Interview with urban prosecutor no.4, 2010.

called 'Copenhagen criteria', which are related to the consolidation of democracy and the rule of law.<sup>1045</sup>

Given the implications for judicial corruption in the context of organised crime, this study suggests several recommendations that can strengthen the judiciary and its role in the fight against corruption and crime. First, the improvement of the quality of democracy is paramount; people should have effective institutional means and equal access to law-making. Second, a set of effective judicial reforms should be tailored to increase the professionalism of judges, improve their ethical behaviour and the quality of bureaucracy. These reforms should aim to raise the cost of judicial corruption, eradicate corrupt judges and allow more space for professional judges in the judicial structure. Third, access to judicial reforms should be more transparent and the judiciary more accountable to the public. Immunity of the judges from prosecution of corruption should be removed and even judges of the higher courts should be subject to judicial inspection.

Given that there is a paucity of research on the links of judicial corruption and organised crime in post-communist societies, this study brings some important contributions to the literature.

Methodologically, this thesis is the only work, the author is aware of, that draws on legal history, criminology, jurisprudence and public law for the analysis of the links between judicial corruption and organised crime. It is also among the very few works that attempt to theorise empirically judicial corruption in post-communist societies. For the first time also this research applies the Bangalore Principles of Judicial Conduct (BPJC) to elucidate the landscape of judicial corruption. In contrast with other models which measure the performance of the judiciary based on institutional indicators, the BPJC draws attention to social and cultural aspects of judicial corruption. However, this study reinforces the concerns of previous authors on some limitations of the usage of a model for assessing courts (Larkins 1996; Hammergren 2007). In the context of my project, the BPJC assisted in the examination of the links between judicial corruption and organised crime.

From a criminological perspective, while there are many studies on the subculture of police corruption, there is a gap in the literature on the studies of the subculture of judges. This research highlights that in post-communist societies, where society is polarised, the poor economic conditions of judges push them to look for informal ways to integrate and improve their social status in society, and a subculture of judges is formed. As another step to the study of judicial corruption in post-communist societies, this thesis leads to fuller comparative study of judicial subculture across different countries in Post-Soviet states.

Another distinctive finding of the research is the role of rapid change of judicial structure as a cause of judicial corruption. While there are studies which point to the successive change of laws as potential factors (Buscaglia 2007; Mendelski 2012), there are no studies so far focusing on the implications of the disruption of court systems on judicial corruption. This theme also merits further research.

This thesis argues that in post-communist societies, if the social status of judges is low, corrupt judges may develop their own subculture and this may create favourable avenues

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<sup>1045</sup> See European Commission Opinion on Albania's Application for Membership of the European Union, November 9, 2010, p.11.

for corruption. A high level of judicial corruption favours corrupt judges more than honest ones and this produces a social disparity among different categories of judges inside the judiciary who struggle for power. This class division may create an internal conflict between judges and erode the efficiency of the judiciary.

The increase of corruption in the judiciary weakens the ability of violent patterns of organised crime to influence the judiciary. This strengthens the role of bribes in corrupting judges. As a result, an ongoing 'clientelist' relationship between organised crime and corrupt judges is more likely. Sophisticated organised crime groups tend to establish permanent relations with judicial corruption whereas less developed organised crime prefer sporadic contacts.

Contrary to the limited existing literature, customary norms such as 'Krahinizm' and 'Kanun' do not play as significant a role in the corruption of modern urban courts as previously expected. However, Kanun does appear to operate in remote areas where the penetration of the modern state and its courts is physically absent. Clientelistic family relationships exert a kind of asymmetrical relationship with judicial corruption – sometimes they may promote particularism but family honour on the part of judges may also work to prevent it. Most importantly, the blood feud continues to play a major role in shaping the incentive of judges for corruption and obstructing the attempts of organised crime to recruit in the hinterland.

In countries where judicial corruption is rampant and alternative dispute resolutions are weak, the increase of judicial independence gives rise to an unintended consequence. This is a form of 'monopolistic' behaviour on the part of the courts whereby they are effectively the sole generator of the protection of property rights. This produces high demand for courts' services. As a result the cost of 'accessing' the courts through bribery increases. It opens opportunities for powerful elites and organised crime to gain by influencing the judiciary. It alleviates some corrupt judges and raises the cost of their promotion.

In societies where there is successive disruption of the judicial system through political transition and lack of consolidated democratic legal culture, judicial corruption is more likely.

This thesis concludes with the general argument that the nature of judicial corruption in post-communist societies is complex and its relationship with organised crime multifaceted. My research has demonstrated that social and cultural influences must be considered alongside other institutional and organisational factors in the explanation of Albanian judicial corruption.

This study suggests the roots of judicial corruption derive from an inherited tradition of a weak judiciary lacking in popular legitimacy which has persisted throughout the modern period of the Albanian state. This deficit of trust was also reinforced during the transition from communism to democracy. The integrity of the judiciary was further undermined by chaotic market oriented policies and a high degree of judicial politicisation during this period. Albanian people, as a result, returned to customary ways of accessing courts. This informal relationship of society with courts created opportunities for corruption and judicial corruption became institutionalised.

Judges relied on each other and formed their subculture for protection, and for quick integration in society. A multilayer category of judges was established inside the court system in which most corrupt judges controlled the distribution of promotion rights in the lower courts. The judiciary is therefore struggling for independence not only externally from the political elite but also internally from a powerful network of corrupt judges.

The patterns of judicial corruption identified were sophisticated and the cost of accessing courts as a result has increased. A clientelist relationship between corrupt judges and the political elite including organised crime was formed. This powerful alliance has limited the opportunities for society and increased the chances for elite and high profile organised crime groups to manipulate courts for their closed interests. As a result the distance between society and the courts has increased and social pressure against corrupt judges has weakened. Judicial accountability has also been undermined. The rise of judicial independence in the last decade has not, therefore, yielded positive results, it has only served to strengthen the corrupt judge .

Finally all these factors have encouraged widespread cynicism within Albania toward anti-corruption policies. This is why society today is indifferent with regard to judicial reforms and views judicial corruption as an irreparable problem. In this context judicial corruption is not only institutionally entrenched in the justice system in Albania but also accepted as a cultural phenomenon in society at large.

# APPENDIX I

## Standard Model

### Conceptualising the Model

To understand the landscape of judicial corruption I will be employing a theoretical construction of a 'standard model' of judicial behaviour. This model will then be compared with judicial corruption in Albania and will help to elucidate its contours. Before explaining my 'standard model' I will first define what the 'standard model' means. I have borrowed Weber's approach of 'ideal-type' as a methodological attempt to better expose the phenomenon. Weber gives several reasons for the methodological role of the 'ideal-type'.<sup>1046</sup> He highlights that the 'ideal-model' is not a hypothesis but it helps to construct the hypothetical grounds for the research object. It is not descriptive in nature but it intends to enlighten the ambiguous part of what is described. Weber defines the 'ideal - type' as the *'one sided accentuation of one or more points of view and by the synthesis of a great many diffuse, discrete, more or less present and occasionally absent concrete individual phenomena, which are arranged accordingly to those one-sidedly emphasised viewpoints into a unified analytical construct. In its conceptual purity, this mental construct cannot be found empirically anywhere in reality.'* (Weber 2007:211)

He further explains that through the use of an 'ideal-type' the researcher will be able to find out to what extent this ideal- construct reflects or diverges from the construct. In my case, I am measuring the landscape of judicial corruption in Albania. This process is comparative in nature. It juxtaposes empirical data with the model. It compares what is, to the 'standard model'. This involves contrasting empirical findings from the interviews with the model in light of earlier claims from the literature review. Weber however, leaves it up to the discretion of the researcher to devise their own ideal-type making sure that certain 'ethical' boundaries are kept and respected throughout the process of inquiry. 'The "ideal-type" needs to be "objectively possible" and "adequate" from the *nomological* standpoint' (Weber 2007:212).

Weber argues that even in analysing history, the researcher must use only those concepts that are defined clearly in the form of the 'ideal-type' (Weber 2007: 213). The ideal-type

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<sup>1046</sup> Weber, M. (2007). 'Objectivity' in *Social Science in Classical Sociological Theory*. Craig Calhoun, Joseph Gerteis, James Moody, Steven Pfaff and Indermohan Virk. Oxford, Blackwell Publishing: 211-217.

may be an extraction from a variety of sociological events or epochs and this might raise a methodological claim in terms of contextual inconstancy between the 'ideal-type' and the context in study. It may appear methodologically incorrect to use a theoretical construct derived from a certain context to measure a different one.

The challenge is to expose the differences between the 'standard model' and the context in study and from there to begin carving out socio-political factors (Weber 2007:215). The use of this 'standard model' in our context serves to facilitate the construction of the judicial corruption landscape in Albania. To illustrate, the definition of the rule of law which has been explained in our first chapter, is an ideal set of standards that a democratic society should comply with. Different societies comply differently. Freedom House, based on these standards, measures and qualifies the progress of democracy in different countries by rating and marking them accordingly. For instance the Albanian judicial framework and independence for 2010 scored 4.25 on a scale of 1 to 7, with 1 representing the highest level of democratic progress and 7 the lowest.<sup>1047</sup>

However, I need to draw a distinct line between the Freedom House's methodological use of 'ideal-type' and my use of 'standard-model'. I do not intend at this stage to make value judgements on judicial integrity in Albania based on certain ideals and criteria. On the contrary, my approach is comparative in a logical way. I seek, as Weber puts it, to do a 'logically comparative analysis of reality by ideal types in the logical sense' (Weber 2007: 215).

Now I turn to explain the selected 'standard model' which will guide this study. My model consists of key analytical components of appropriate judicial conduct. As a basis for forming this model, I build upon The Bangalore Principles of Judicial Conduct (BPJC).

## **Contextualising the Model**

The applicable model in the context of Albania needs to reflect certain criteria. Before explaining them I need to specify some characteristics of the Albanian legal culture that will help to guide our inquiry for a suitable analytical model for the study. As I mentioned earlier, the tradition of the Albanian judiciary is an amalgam of several legal systems such as Islamic Law, French civil law, a few totalitarian legal regimes (Fascism 1939-1941; Nazism 1941-1944, Communism 1945-1989 and Democracy (1912-39;1989-2011) (see chp.7). Harmonisation of national laws with EU legislation as a precondition of EU membership is another factor that is pushing Albanian judges to contextualise the decisions of the European Court of Human Rights (ECHR) and also review all national laws according to EU principles before commencing full membership of the Union.

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<sup>1047</sup> See Freedom House 2010 Report 'Nation in Transit' available at <http://www.freedomhouse.eu/images/Reports/NIT-2010-Albania-final.pdf> [accessed August 10, 2012].

The Albanian legal culture, as mentioned above, is diverse and also contains traces from other legal systems such as Islamic law and socialist or communist legal systems. Albanian courts are currently also applying patterns of common law legal reasoning such as precedent. Albanian customary norms such as the 'Kanun of Lek Dukagjini' are strong in the hinterland and mostly applicable in the North, and their influence on Albanian legal culture cannot be ignored. In addition, legal culture is a broader term than the legal system. In this context, we cannot rely on a civil law influenced model of judicial conduct. The legal system can be only one of the many other significant factors that can cause judicial corruption. There are also other socio, economic and political factors which need to be explored. I can do that only by using a model that embodies all ingredients of the Albanian legal culture in order to help this research point to all possible facets of the judicial corruption in the context of OC.

Therefore, a standard model based only on one legal system may not be helpful to explain nuances that may derive from other systems not considered in the standard model. I need first, a model that sets its standards on a wide range of legal systems so as to make sure that all characteristics of the Albanian legal culture can be mirrored there. Judicial corruption is not only institutional but is also caused by social and cultural factors (Buscaglia 2007; Karklins 2007). The standard model should therefore, first, represent or be formed based on all conventional legal systems like common law, civil law and Islamic law. In addition, the standard model needs to be composed grounded on the opinions of a large community of judges. It is important that they come from different legal experiences, regions and systems, including especially those from post-communist societies in Eastern Europe.

Second, the standard model should consider the views of experts and not simply rely on people's perceptions as usually the latter can be misleading. Having an ideal model framed according to the judges' perspective may be even closer to ideal judicial conduct. This approach is more likely to help this study to probe the causes of judicial corruption from the judges' point of view which is usually missing in the literature or international reports on judicial corruption. In addition, taking a model based on the judge's perspective can generate more objective findings and more clear grounds for the analysis of this project. In this research, judges are the same community sample, interviewed during the field work.

Third, the selected model should be reliable by being internationally acceptable or recognised by the community of judges. It also needs to have already been tested and applied worldwide. There are two factors stimulating this requirement, the first one being that we are living in a globalisation area where laws tend to globalise, and the second is that Albania is soon to join the EU, a region with a variety of legal systems. As mentioned, the process of harmonisation of laws with the EU is a condition put forth in the Stabilisation and Association Agreement with the EU which entered into force in 2009.

In now turn to explain why the BPJC is the most suitable analytical model employable for this research.

Since its independence in 1912, Albania's legal system has undergone a complex legal process, starting from transition from Ottoman Law to the new era of French civil law in 1924-1939; forty years of communist governance 1940-1989 and returning to the actual civil law which more resembles a cocktail of civil law, prepared by pieces of law borrowed



from different European states (see chp.7). Therefore, our model, as analysed above, needs to consider elements that reflect dynamics from all these legal experiences. Such a document is the BPJC. This document emerged as a result of people's concern about judicial corruption and the increased public mistrust in the judiciary worldwide.

Under the auspices of the United Nations Centre for International Crime Prevention, a group composed of Chief Justices and senior justices, known as 'The Judicial Integrity Group', worked together on framing a set of principles in respect of judicial conduct during 2000-2002 (Commentary 2007). This was the first time that the United Nation had asked judges to 'put their house in order' (Commentary 2007: 9). In their first meeting they set out two basic concepts which served as the premise of the BPJC.

First, they agreed on that the principle of accountability required a more active role on the part of national judges in strengthening judicial integrity by pushing forward judicial reforms within the judiciary's competence. Second, they stressed that 'a universally acceptable statement of judicial standards which, consistent with the principle of judicial independence', would be applicable and enforced at the national level without the interference of the legislative and executive (ibid:10).

During the transition Albanian laws were drafted with the help of different experts coming from several jurisdictions or copied from nearby countries such as Italy, Greece, Austria, Spain and France. As mentioned above, Albanian Criminal Codes are mostly based on the Italian experience, Civil Codes and the Family Code from the French and others, such as the Labour Code and Commercial Law from German and Austrian similar laws (see chapter 4 and chapter 7).

Similarly the BPJC was drafted by a very diverse community of judges. In preparing this set of principles, the Judicial Integrity Group had recourse to a variety of national, regional and international codes of judicial conduct. The first draft was initially influenced by the common law approach (Commentary 2007:12). It was in the second meeting in 2001 that The Judicial Integrity Group decided that the draft should be checked and scrutinised by a broader range of judges, involving also those from civil law jurisdictions. The second draft was circulated to many judges from different legal systems to gather their opinions and it was revised even by Eastern European judges, including senior judges from Kosovo as well (ibid:13). Albania had been governed for five centuries by the Sharia Law during the Ottoman presence between the 14<sup>th</sup> and 19<sup>th</sup> centuries (see chapter 7). Therefore a judicial code of conduct considering this aspect would be an additional socio-legal asset for Albania. The BPJC has been reviewed by judges with an Islamic Law background.

As mentioned, Albania signed the Stabilisation and Association Agreement with the EU which, among other requirements, obliges Albania to approximate and harmonise its laws with the EU. The BPJC was assessed by representatives of the Consultative Council of European Judges who also represented their remarks in the second draft (Commentary 2007:14). It should be noted that the BPJC raised several legal disagreements between common law and civil law judges and it is worth mentioning some key points here that are relevant for the legal context of Albania. Legal disputes consisted in the ordering of the principles (values); usage of technical wording; and disagreement on the nature of the political activities of judges. In terms of the preferential ranking of the values, common law

judges disagreed with the current order which ranked 'propriety' after 'independence', 'impartiality', and 'integrity'.

Disagreement on one piece of terminology, among others, was on the use of the word 'code'. Civil law judges claimed that the usage of 'code' as a term might be confusing, as in civil law jurisdiction the term 'code' constitutes a 'complete and exhaustive' legal instrument. A code of conduct is not a statutory law, therefore it would be inappropriate to use the term code for the BPJC. In addition, civil law judges expressed their concern with the text of the 'Preamble'. According to the preamble the source of judicial power is derived from 'the public acceptance of the moral authority and integrity of the judiciary'. Civil law judges argued that the source of judicial authority was the constitution.

The political activity of judges was the most contested matter. Civil law judges supported the view that participation of judges in political activity should not be viewed as inappropriate. They based their argument on the fact that currently there is no internationally recognised consensus on whether judges should be allowed to participate in politics. There are countries that allow judges to engage in political activities (Commentary2007:16). This matter, according to the civil law judges, should be left to the discretion of each country to decide. The civil law judges thus opined that non-participation of judges in political activity should not be stipulated as a global principle (ibid.).

Albania is a member of almost all the main international organisations such as the United Nations, World Bank, IMF, and NATO. It was important that the model of judicial conduct retained a worldwide credibility. As such the BPJC has growing international recognition. The Special Rapporteur on the Independence of Judges and Lawyers presented the BPJC to the United Nations Commission on Human Rights in April 2003. At this meeting the Commission adopted resolution 2003/43 noting 'the Bangalore Principles of Judicial Conduct (E/CN.4/2003/65, annex) adopted at the Round Table Meeting of Chief Justices held in The Hague on 25 and 26 November 2002 and bringing those principles to the attention of Member States, relevant United Nations organs and intergovernmental and non-governmental organizations for their consideration'.<sup>1048</sup>

In addition, renowned experts have required that the BPJC be extended even to law schools and professional associations. The United Nations Special Rapporteur on the Independence of Judges and Lawyers in 2004, Dr Leandro Despouy suggested that 'the Bangalore Principles be made available, preferably in national languages, in all law faculties and professional associations of judges and lawyers' (Commentary2007:17).

It will be beyond the scope of this study, which is on the factors of judicial corruption and its interplay with OC, to do an in-depth analysis of the BPJC, therefore, in the following I will only sketch out each of these 'values' in order to set out a better idea before projecting them into my empirical data.

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<sup>1048</sup> For more see Resolution 2003/43 adopted by the UN Commission on Human Rights. Available at <http://www.unhcr.org/refworld/publisher,UNCHR,,43f313390,0.html> [accessed August 15, 2012].

## Bangalore Principles of Judicial Conduct

The model of the BPJC consists of six core values: independence, impartiality, integrity, propriety, equality, and competence and diligence. Each of these values is followed by sub-points or conditions that are suggested for application of these principles/values. It is important to note that while where lack of judicial independence is often cited as one of the most significant factors for judicial corruption, in the BPJC the number of suggestions as to how this value may be applied was not the highest. There are other 'values' which apparently had not been so common much popular in the literature of judicial corruption which elaborated more suggestions than 'independence' from the BPJC for their applicability.

There are only five suggestions made for 'independence' whereas in a stark contrast, there are sixteen suggestions provided for 'propriety'. This disproportionate number of suggestions may be a significant indicator of the growing role and importance of judges' appearance and trust in front of the public. On the other hand, this emphasises the importance and intention that was given to 'propriety' by the BPJC. It may be assumed that this tendency may also be derived from the constant influence in the last decade of several international reports on judicial corruption which have mainly been based on the people's perception. Whatever the reasons, the extensive number of applications given to 'propriety' by the BPJC shows how important it is to demonstrate justice and not just to do justice.

### Independence

Judicial independence is the hallmark of the BPJC.<sup>1049</sup> Independence of judges here is perceived in very broad terms, from the individual and institutional perspective to social and political independence. Judicial independence according to the Bangalore Principles refers to 'both a state of mind and a set of institutional and operational arrangements. The former is concerned with the judge's independence in fact; the latter with defining the relationship between the judiciary and others...' (ibid:39).

Judges should also be free from any social pressure in the course of their work, including interpersonal connections with colleagues and parties in the litigation (Application 2). Politically judges should avoid any inappropriate connection with other branches of the government, executive and legislative (Applications 1 and 3). As the Commentary points out 'Judges should not beholden to the government of the day' (ibid:40). Judges should also play an active role in maintaining the institutional and operational independence of the judiciary by being 'vigilant.. to any attempts to undermine [their] institutional and

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<sup>1049</sup> According to the BPJC 'judicial independence is a pre-requisite to the rule of law and a guarantee of a fair trial'. See Value 1 'Independence' in the BPJC 2002:3.

operational independence ...'(ibid:52). They can even stimulate the public's awareness of judicial independence by helping them 'understand the fundamental importance' of this principle (ibid).

In a nutshell, 'Independence' according to the BPJC includes independence of personal views; society; executive and legislative; colleagues and court staff. Judges are also required to uphold institutional integrity and promote trust and high standards of the judiciary to the public. It should be noted that conceptually 'independence' may sometimes be confused with 'impartiality'. Being independent is to be impartial in certain court cases and both concepts may be blurred and confused at times (Stith and Root 2009). The BPJC are aware of this issue and carefully distinguish 'independence' from 'impartiality'. In the Commentary (2007:40), 'impartiality' refers to 'a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case. The word 'impartial' connotes absence of bias, actual or perceived.' 'Independence' on the other hand, anchors in the 'traditional constitutional value of independence...it connotes not merely a state of mind or attitude in the actual exercise of judicial functions, but a status or relationship to others, particularly to the executive branch of government that rests on objective conditions or guarantees'(ibid). It is not by chance that 'Impartiality' comes right after 'Independence' as the second value of the BPJC.

## **Impartiality**

Impartiality according to the BPJC is 'essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made'.<sup>1050</sup> Judges should be impartial in terms of their approach, and be rational but should also appear as such. The test of the impartial appearance of judges however is vague as explained in the Commentary.

Accordingly 'the perception of impartiality is measured by the standard of a reasonable observer' (Commentary 2007:57). The BPJC defines a reasonable observer as 'a reasonable, fair-minded and informed person' who 'might believe' that the judge is unable to decide the matter impartially (ibid:68). It should be highlighted here that although the term 'reasonable observer' is used earlier in the Commentary (p.47), as it is in the BPJC's first value, its definition however appears at suggestion 2.5 of the application of 'Impartiality'.

As shown in the definition, it is very difficult to test the reasonableness of the observer because moral values such as 'fair-minded' and 'believe' are very individual and subjective. They may differ in different contexts and cultural aspects of the society in which a judge works. What is meant by a 'fair-minded' observer of a judge in the hinterlands, where the impact of customary norms is significant, may differ from someone who lives in urban areas, whose perception of modern laws is clearer (see chapter 4).

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<sup>1050</sup> See BPJC 2002, the value of 'Impartiality'.

The BPJC renders five applications for impartiality. They can be clustered as objective and subjective factors.<sup>1051</sup> The subjective parts of impartiality are very personal and mostly related to a judge's commitment. Therefore, it is down to the judge to avoid favour, bias and prejudice when he thinks that these elements exist in the case before him (Application 1). It is also down to the judge to demonstrate his impartiality in and out of the court room (Application 2). Judges should try to minimise any situation that may 'disqualify them from hearing cases' (Application 3). It will be considered improper and impartial if judge issues a comment before or during a case's decision as this may influence the final verdict of the court (Application 4). Objective factors are mostly procedural and refer primarily to situations where a conflict of interest may arise between the judge and litigated parties but also with the circumstantial factors of the case.

Therefore, a judge should recuse from a case if he has an actual bias or prejudice or has prior personal knowledge of the evidence. He should withdraw even if he has worked before as a lawyer with the case. A judge should dismiss himself if he or a member of his family has an economic interest in the outcome of the case (Application 5). In sum, impartiality would mean that judges, in the course of their work and court process, should avoid bias, favouring and prejudice to the parties in the process. In addition, they should avoid any case of conflict of interest and try not to influence the outcome of the case by expressing any comment while the case is still not decided. Further impartiality requires judges to promote and demonstrate their impartiality to the public.

## **Integrity**

Integrity is the third value of the BPJC. As in the other principles mentioned above, 'Integrity' is seen as 'essential to the proper discharge of the judicial office'. The conceptual framework of 'integrity' has been taken in a very broad sense without referring to any definition or particular example. The Commentary points out that 'there are no degrees of integrity as so defined. Integrity is absolute. In the judiciary, integrity is more than a virtue; it is necessity' (ibid:79). Being difficult to define 'integrity', the Bangalore Principles have applied a contextual test of this value based on the moral norms of the community in which it is applied. Accordingly, the 'effect of conduct on the perception of the community depends considerably on community standards that may vary according to place and time' (ibid).

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<sup>1051</sup> Quoting the European Court of Human Rights (ECHR) in their decision in Gregory v. United Kingdom, 1977, 25 EHRR 577, the Commentary (2007:57) points out that requirements of impartiality as explained by ECHR are twofold. 'First, the tribunal must be subjectively impartial, i.e. no member of the tribunal should hold any personal prejudice or bias. Personal impartiality is to be presumed unless there is evidence to the contrary. Secondly, the tribunal must also be impartial from an objective viewpoint, i.e. it must offer sufficient guarantees to exclude any legitimate doubt in this respect.' (Commentary 2007: 57-58).

Even in this principle, the BPJC reinforces the importance of public perception of the integrity of judges. And this is reflected in two applications advised to be followed in preserving integrity in front of the public. In the first, 'a judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer'. In the Commentary, the standards of integrity are measured with that of the community. A judge's behaviour in this respect should be at the highest level of community standards both in public and private life. However, judges should not be influenced by standards of any segmented part of the society. The border line to test judges' attitudes is not 'whether an act is moral or immoral according to some religious or ethical beliefs, or whether it is acceptable or unacceptable by community standards (which could lead to arbitrary and capricious imposition of narrow morality), but how the act reflects upon the urban components of the judge's ability to do the job for which he or she has been empowered (fairness, independence and respect for the public) and on the public perception of his or her fitness to do the job'(ibid: 81).

In the second, 'the behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done'. The integrity of a judge is seen in both professional and personal aspects. A judge is a member of a community and he needs to maintain his integrity to the highest standards even in his private life. Public trust in the courts may be influenced by the bad behaviour of judges in their private life. 'A judge must not only be a "good judge", but must also be a "good person"...' (ibid:83).

For the integrity of judge it will not suffice to just create a good impression and have a positive influence on the public perception. The judge 'must not only be honest but also appear to be so' (ibid). Judges not only need to decide the case honestly but they need also to behave in a good manner during the process so as to give the impression to the parties that they are honest and impartial (ibid). In sum, integrity is about reassuring the public that judges possess integrity. This should be made clear. Judges not only need to be just but they should also demonstrate their justice. It should be mentioned that the criteria and normative framework provided by the Bangalore Principles on integrity are not as elaborated as other values. This principle responds more to institutional integrity than to individual integrity. The BPJC seems to have allocated this burden to the following value 'Propriety'.

## Propriety

The BPJC considers 'Propriety' and its appearance as 'essential to the performance of all of the activities of a judge'.<sup>1052</sup> It seems like an axiom for the Bangalore Principles that justice needs not only to be given but also to be shown. In fact 'showing justice' is even more important in the view of the Bangalore Principles. 'What matters more is not what a judge does or does not do, but what others think the judge has done or might do' (Commentary 2007: 85). As we will see in the following paragraphs, propriety not only includes issues of appearance but also elements of the personal integrity of judges. For this reason we will be tackling all the applications suggested for this principle.

It is not by chance that the BPJC gives great importance to 'Propriety' of judicial conduct and its appearance in public. The number of applications suggested by the BPJC for this 'value' is higher compared with those suggested for others. For instance 'Independence' has 6; 'Impartiality', 5; 'Integrity', 2; 'Propriety', 16; 'Equality', 5, and 'Competence and Due Diligence' have 7. Suggestions for 'Propriety' begin with a 'catch all' requirement advising judges to 'avoid impropriety and the appearance of impropriety in all of the judge's activity' (Application 1).

Judges are citizens and they can exercise every right provided by the law such as joining associations or clubs irreconcilable with political activities (ibid: 95). They can also form or participate in associations that represent their interests (Application 13). But because they are public figures they should accept 'certain restrictions'. And when exercising their rights they should conduct themselves in ways that 'preserve the dignity of the judicial office and the impartiality and independence of the judiciary' (Applications 2 and 6). A judge should be aware of his conduct in his professional activity with his colleagues and representatives of the legal profession and try to avoid any situation that may 'reasonably give rise to the suspicion or appearance of favouritism or partiality' (Application 3).

Judges should avoid any act that may appear as giving rise to the appearance of a conflict of interest such as avoiding taking cases involving the members of their family or represented by them (Application 4) or letting them, close friends, court staff or their colleagues improperly influence their conduct and judgement (Applications 4, 14 and 15). Nor should they allow them or others 'to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done, or omitted to be done' in reference to their work (Applications 14 and 15). It will not be considered as improper if judges accept gifts or other benefits if this is in accordance with the law; perceived as being proper; and without intentions to influence judges' decisions (Application 16).

Propriety of solemnity or its appearance is another important factor influencing public trust in the judiciary. Therefore, judges should avoid any use of their residence or office by other members of the legal profession (Applications 5 and 9). Nor should they misuse their position or reputation for private interests. Judges should also not 'convey the impression that anyone is in a special position improperly to influence judges in performance of

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<sup>1052</sup> See, BPJC 2002, the value of 'Propriety'.

judicial duties' (Application 9). In addition, judges should avoid working with or engage in practising law in other institutions while holding their position as a judge (Application 12). However, it will not be considered as improper if judges are involved in academic activities or other public appearances providing that they preserve high standards of judicial conduct and integrity (Application 11).

To sum up, 'Propriety' requires that judges appear and behave properly both in public and private life; avoid suspicious behaviour with all parties in the process; avoid cases where conflict of interest may arise; avoid use of their office by members of the legal profession; sustain neutrality individually or as part of any association or other situation that may involve the exercise of rights to freedom of expression; be informed of his and his family members' financial interests; avoid the influence of his staff, colleagues, family members and their friends; avoid exchange of favours; be confidential and protect personal data of litigating parties and avoid practising law elsewhere while being a judge. All this being said, judges' propriety will not be affected if judges participate in associations which represent their interests, nor will their propriety be affected if they are involved in academia.

## **Equality**

Justice is about a just decision providing that reference is made to the law alone and to the facts of the case. Everyone is equal before the court and should be treated fairly. Judges should avoid any objective or subjective ground that may give rise to discrimination or stereotyping (Commentary 2007:121). Every judge should be informed about national, regional and international legal documents on discrimination (ibid). The BPJC renders 'equality' as its fifth principle but not as less important than the other values in terms of judicial conduct. Equality and fairness 'have long been regarded as essential attributes of justice. Equality according to law is not only fundamental to justice, but is a feature of judicial performance strongly linked to judicial impartiality' (ibid).

Judges not only need to be familiar with issues of diversity and differences deriving from different cultural, political, religious and other similar 'irrelevant grounds' but should also take care to avoid 'in the performance of judicial duties by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds' (Applications 1 and 2). Judges should have appropriate consideration and be aware to not discriminate on 'irrelevant grounds' against any persons (i.e. parties, witnesses, lawyers, court staff, and judicial colleagues) in the course of his work (Applications 3 and 4). Nor should he allow or require lawyers before him in a court proceeding, by way of speaking or actions, to manifest 'bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy' (Application 5).

In sum, 'equality' is a principle that requires judges to understand and be aware of diversity on 'irrelevant grounds'. They should avoid manifesting bias and prejudice by words or actions. Judges should consider all parties in the process equal. They should also avoid



court staff influencing them to differentiate between parties. Nor should judges allow lawyers to demonstrate prejudice or dissemination in the court room.

## **Competence and Diligence**

The BPJC renders 'competence and diligence' as 'prerequisites to the due performance of judicial office'. A competent judge would mean someone possessing all the required legal knowledge and sufficient skills necessary for a sound legal review (Commentary 2007:129). A judge's competence needs also to be shown and this requires that judges avoid being manipulated by alcohol, drugs or other substances with similar effects that may corroborate their competence or appearance of competence (ibid). Lack of experience, an unstable temper or lack of self control may also be considered as incompetence on the part of the judges (ibid).

Judicial diligence is not limited only to unpleasant situations where a judge should be sober or 'decide impartially and act expeditiously' but also requires that judges make every effort to maintain independence by upholding the law and protecting the judicial process from abuse. The quality and performance of diligence may be weakened by lack of sufficient time to process the file, shortage of technical assistance and absence of social time (ibid). Judicial competence and diligence requires that judges give priority to their work over any other responsibility (Application 1). Judges may be engaged in extra-legal activity to increase their income but this should not affect their main duty or function as a judge. Otherwise this may be called improper competence and diligence. 'The judiciary is an institution of service to the community ....and not another segment of the competitive market economy' (Commentary 2007: 131).

Part of judicial diligence is considered to be even the administrative competence of judges in managing office and court operations (Application 2). This includes 'case management (including the prompt disposition of cases), recordkeeping, management of funds, and supervision of court staff' (Commentary: 132). Judges should take care to protect court records and also be careful to avoid any informal payments made to the court's staff for issues like 'calling up of files, the issuing of summons, the service of summons, the issuing of a copy of the evidence, the obtaining of bail, the provision of a certified copy of a judgment, the expedition of cases, the delaying of cases, the fixing of convenient dates and the rediscovery of lost files' (ibid:132-133). Competence needs to be up to date, and a professional judge should keep improving his skills through permanent training (Application 3). It is the duty of a competent and responsible judge to stay informed about the latest developments in national and international law and human rights norms (Application 4).

Substantive indicators of judicial competence and diligence are punctuality, prompt delivery of decisions, order of the court process and decorum, and treatment of all parties with respect in the court room (Applications 5 and 6). '[What] is required is for a judge to take reasonable steps to achieve and maintain the level of order and decorum in court that is necessary to accomplish the business of the court in a manner that is both regular and

manifestly fair, while at the same time giving lawyers, litigants and the public assurance of that regularity and fairness' (Commentary 2007:141). Judges should be careful to avoid engaging in any conduct which is not in compliance with the 'diligent discharge of judicial duties' (Application 7). This includes fair distribution of work by presiding judges, withdrawal of cases only for valid reasons, taking appropriate actions in case of unprofessional behaviour by another colleague or lawyer and avoiding abuse of court staff and facilities (ibid:142).

To sum up, 'Competence' and 'Due Diligence' means that judicial duty should be the judges' utmost priority and all their professional activity should be focused on that. To be able to realise this task, judges should maintain and improve professional skills, be informed or updated about local and international laws as well as mechanisms for protecting human rights. Competence will also mean delivering decisions 'efficiently, fairly and with reasonable promptness'. Part of professionalism is even preserving personal and institutional prestige. So judges should maintain order and decorum in the court room; respect and acquire respect from parties. Judges' conduct should also be compatible with the diligent discharge of their duties

# APPENDIX II

## Models of Judicial Independence

<b>Recommendation of Council of Europe 2010</b>	<b>Draft Principles on the Independence of the Judiciary "Siracusa Principles" 1981</b>	<b>Minimum Standards of Judicial International Bar Association , 1982</b>	<b>United Nations Basic Principles on the Independence of the Judiciary  The UN General Assembly, 1985</b>	<b>Draft Universal Declaration on the Independence of Justice "Singhvi Declaration" 1989</b>	<b>The Beijing Statement  August 1997</b>	<b>The Latimer House Guidelines of the Harare Principles, 1998</b>	<b>The European Charter on the Statute for Judges, Council of Europe, July 1998</b>	<b>The Universal Charter (Taiwan) November 1999</b>
Judicial Independence	Judicial Independence	Judges& Executive	Judicial Independence	Judicial Independence	Judicial Independence	Judicial Independence	Judicial Independence	Judicial Independence
External independence	Qualification: Selection and Training of Judges	Judges & Legislators	Freedom of Expression and Association	Qualifications, selection and training	Objectives of the Judiciary	Appointments	Selection, Recruitment, Initial Training	Status
Internal independence	Posting: Transfer and Promotion	Terms and nature of judicial appointments	Qualification, Selection and Training	Posting; promotion; and transfer	Appointment	Funding	Appointment and Irremovability	Submission to the law
Councils of the Judiciary	Retirement : Discipline, Removal and Immunity	Press, Judiciary and Courts	Conditions of Service and Tenure	Immunities and Privileges	Tenure	Training	Career Development	Personal Autonomy
Duties & Responsibilities	Working Conditions: Administrative and Financial conditions	Standards of Conducts Securing Impartiality and Independence	Professional secrecy and immunity	Disqualifications  244	Judicial conditions	Accountability	Liability	Impartiality and Restraint

Ethics of Judges		Internal Independence	Discipline, Suspension and Removal	Discipline and Removal	Jurisdictions  Judicial Administration	Judicial Review	Remuneration and Social Welfare	Efficiency
				Court Administration and conduct (miscellaneous)	Judicial independence may be limited) for national interest	Judicial Ethics	Termination of Office	Outside Activity  Security of Office  Appointment
								Civil and penal responsibility,  Administration and disciplinary actions,  Associations;  Renumeration,

## Models of Judicial Conducts

<b>The Bangalore Principles of Judicial Conduct</b>	<b>The Code of Conduct of the Judicial Conference of the United States</b>	<b>Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998</b>	<b>Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999</b>	<b>Code of Conduct for Judicial Officers of Kenya, July 1999</b>	<b>Code of Conduct to be observed by Judges of the Supreme Court and of the High Courts of Pakistan</b>	<b>Judicial of the European Court of Human</b>
Independence	A Judge Should Uphold the Integrity and Independence of the Judiciary	Independence	The behavior and conduct of members of the higher judiciary must reaffirm the people's faith in the impartiality of the judiciary	Judicial independence	Judges must ensure equality before the law	Indepen
Impartiality	A Judge Should Avoid Impropriety and the Appearance of Impropriety in All Activities	Integrity	Judge should not contest the election to any office of a Club, society or other association; further he shall not hold such elective office except in a society or association connected with the law	Judicial accountability and efficiency	Judge should be God-fearing, law-abiding, abstemious, truthful of tongue, wise in opinion, cautious and forbearing, blameless, and untouched by greed	Impartia

Integrity	A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently	Diligence	Close association with individual members of the Bar, particularly those who practice in the same court, shall be eschewed	Community trust and confidence	'official and private, free from impropriety is expected of a Judge.	Integrity
Propriety	A Judge May Engage in Extrajudicial Activities That Are Consistent with the Obligations of Judicial Office	Equality	A Judge should not permit any member of his immediate family, such as spouse, son, daughter, son-in-law or daughter-in-law or any other close relative, if a member of the Bar, to appear before him or even be associated in any manner with a cause to be dealt with by him	Professionalism	To ensure that justice is not only done, but is also seen to be done, a Judge must avoid all possibility of his opinion or action in any case being swayed by any consideration of personal advantage, either direct or indirect	Diligence competence
Equality	A Judge Should Refrain from Political Activity	Impartiality	A Judge should practice a degree of aloofness consistent with the dignity of his office	Impartiality	Judge gets thereby all the publicity that is good for him. He should not seek more.	Discretion
Competence			A Judge shall	Personal	Extra-Judicial	Freedom

and Diligence			not enter into public debate or express his views in public on political matters or on matters that are pending or are likely to arise for judicial determination	integrity	duties or responsibilities, official or private, should be generally avoided. He should equally avoid being a candidate, for any elective office in any organization whatsoever.	expressi
			<p>A Judge is expected to let his judgments speak for themselves; he shall not give interview to the media.</p> <p>A Judge shall not accept gifts or hospitality except from his family, close relations and friends</p>	<p>Uphold the dignity of the court and promote respect for the courts duty to administer justice independently impartially according to the law.</p>	<p>In his judicial work, and his relations with other Judges, a Judge should act always for the maintenance of harmony within his own Court, as well as among all Courts and for the integrity (If the institution of justice</p>	<p>Addition activity  Favours advanta  Decorat and hon  Retirem</p>

## APPENDIX III

### Indicators of Risks in the Context of Bangalore Principles of Judicial Conduct

Model's Standards	Independence	Impartiality	Integrity	Propriety	Equality	Competence and Diligence
<b>Direct Evidence</b>	<p>1-High Profile Court Decisions on cases involving politicians and public officials (urban and rural), and Organised Crime—highly controversial and presented in the media; controversial court cases on property rights (sea shore</p> <p>2- Controversial Court Decisions on Organised Crime</p> <p>3- Politicization of Lustration</p> <p>4- Reports of International Organisation with their presence/or covering Albania- OSBE,WB, EURALIUS; TI; Helsinki Committee; Freedom House,</p>	<p>1-High Profile Court Decisions on cases involving politicians and public officials (urban and rural), and Organised Crime—highly controversial and presented in the media; controversial court cases on property rights (sea shore</p> <p>2- Controversial Court Decisions on property rights (sea shore</p> <p>2- Controversial Court Decisions on Organised Crime</p> <p>3- Politicization of Lustration</p> <p>4- Reports of International Organisation with their presence/or covering Albania-</p>	<p>1-Reports of International Organisation with their presence/or covering Albania-</p> <p>2-Reports of Public Institutions such as Ministry of Justice, Interior and HCJ</p> <p>3-Media (newspapers, journal articles )</p> <p>4-Interviews</p> <p>5- Archives</p>	<p>1-Reports of International Organisation with their presence/or covering Albania-</p> <p>2-Reports of Public Institutions such as Ministry of Justice, Interior and HCJ</p> <p>3- Media (newspapers, journal articles )</p> <p>4-Interviews</p> <p>5-Archives</p>	<p>1-Reports of International Organisation with their presence/or covering Albania-</p> <p>2-Reports of Public Institutions such as Ministry of Justice, Interior and HCJ</p> <p>3-Media (newspapers, journal articles )</p> <p>4-Interviews</p> <p>5-Archives</p>	<p>1-High Profile Decisions on cases involving politicians and public officials (urban and rural) and Organised Crime—highly controversial and presented in the media; controversial cases on property rights (sea shore</p> <p>2- Controversial Court Decision on Organised Crime</p> <p>3- Politicization of Lustration</p> <p>4-Reports of International Organisation with their presence/or covering Albania- OSBE,WB, EURALIUS; TI; Helsinki Committee; Freedom House; UN;EBRD</p> <p>5- Media (newspapers, journal articles )</p> <p>6-Reports of Public Institutions such as Ministry of Justice, Interior and HCJ</p>



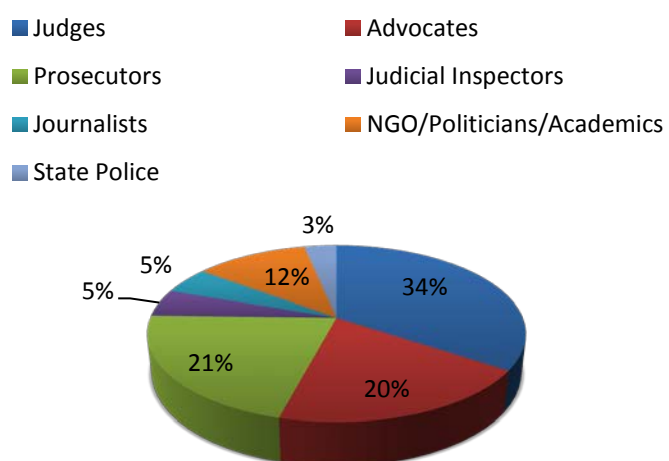
	UN;EBRD	OSBE,WB,	7-Interviews
	5- Media	EURALIUS; TI;	8-Archives
	(newspapers,	Helsinki	
	journal articles	Committee;	
	)	Freedom	
	6-Reports of	House,	
	Public	UN;EBRD	
	Institutions	5-Media	
	such as	(newspapers,	
	Ministry of	journal	
	Justice, Interior	articles )	
	and HCJ	6-Reports of	
	7-Interviews	Public	
	8-Archives	Institutions	
		such as	
		Ministry of	
		Justice,	
		Interior and	
		HCJ	
		7-Interviews	
		8-Archives	

## APPENDIX IV

### Sample Structure

Interviewees	Number of Interviewees	Urban Courts	Rural Courts	Percentage
Judges	21	11	10	34%
Advocates	12	8	4	20%
Prosecutors	13	7	6	21%
Judicial Inspectors	3	-	-	5%
Journalists	3	-	-	5%
NGO/Academics/Politicians	7	-	-	12%
State Police	2	-	-	3%
<b>Total</b>	<b>62</b>			<b>100%</b>

### Participants



# APPENDIX V

## Organised Crime and Judicial Corruption: Democratic Transformation and Prospects for Justice in the Balkans

### Interview Guide

#### 1- Judicial Reforms (all respondents)

- What are some of the main judicial reforms enacted since 1989?
- Probe who has supported and opposed them?
- Probe what proposed judicial reforms have been defeated and what strategy was used in doing so? (Probe political elite, line item veto and check by court level or region.)
- Probe what is the biggest problem that judicial reforms have experienced since 1989?

#### 2-Judicial Independence (all respondents)

##### ***Administration***

- To what extent does judicial independence exist in Albania? (Probe by level of courts and region.)
- Probe ways that how budget is used by administration in an effort to influence court staff and judges

##### ***Budget***

- What is the budget allocation process? (Probe the agency responsible, how funds are spent, access, transparency, people in charge, where the investment goes most, criteria.)
- Probe how much are the salaries of judges compared to similar level public officials?
- Probe what is the estimate of average value of cases per year compared to the budgeted? (Probe by level of court and region in Euro.)

##### ***Selection, Nomination of judges, Legal safeguards, Promotion, Appointment, Education, Experience***

- What is the procedure of selection, nomination and promotion?
- On what criteria do judges get promoted? (Probe reasons, indicators by level of court and experience.)

- Probe are the regional(Krahinizem) or political preferences of the judge candidate playing any role in the selection of judges?
- What is the status of judges in society today?

### **3- Judicial Corruption (All respondent—judges only the underlined)**

- *Nature and trend*
- We some times hear about judicial corruption. What does this term mean to you?
- Do you think there is judicial corruption today?
- What are the most obvious judicial corruption acts?
- Thinking back over the years 1980-2010, has judicial corruption increased or decreased?
- Probe the intensity by case load, turning points, case importance i.e. political cases etc.)
- Probe to what extent has the nature of judicial corruption changed since 1989 and then 1980? (Probe factors of change.)

#### ***Causes***

- We will talk in more details later but generally, to have an idea, what would you say are some of the main causes of judicial corruption in Albania?
- Probe economical, (salary, short of budget, poor infrastructure (specify)
- Probe legal culture, quality of law, (specify)
- Probe disruption of judicial structures (specify implications)
- What do you think caused the change of corruption since 1989 generally and judicial corruption more specifically?
- Probe has democratic transition process in itself influenced the court progress? (Probe any casual link with judicial corruption and its dynamics in Albania.)

#### ***Extent Today***

- Focusing on today how pervasive is judicial corruption? (Probe in what courts is it more widespread, by case and region.)
- Do judges consider all payments or favours illegal? (Probe what do they think about bakshish.)

## **Access**

- In your opinion are courts difficult to be approached in terms of corruption and why? (Probe level, region, and work experience: Probe the most easy and difficult ones.)
- Probe to what extent are judges accessible to contact litigating parties and those interested in the case? (Probe litigants, advocates, prosecutors, organised crime, politicians, law enforcement, business elite.)
- Probe when, and in what part of the judicial process do actors mainly get involved to achieve corruption and why? [(Probe through a scale politicians(local/central.), organised crime(local/central.), business elites(local/central.), media, powerful individuals, court staff, family, advocates, prosecutors, decision writing etc.)]
- Probe who do judges say approaches those most in terms of corruption? [(i.e. litigants, advocates, politicians, organised crime, business, court staff.), (Probe frequency senior v. younger generation.), advocates (post communist v. new generation, politicians, organised crime, business elites (by case, court level, region.)
- Why, in your opinion, usually people claim that advocates are the main intermediaries to judicial corruption? (Probe court level and region.)
- What ADR is there in Albania today? (Probe mediation, arbitration private or public.)
- Is it difficult to enforce an ADR decision and why?

## **4-Organised crime, judicial corruption and political elite (all respondents-judges only underlined)**

- What indicators may point to the interplay among judicial corruption, organised crime and political elite? [(What, how, indicators, problems (by case, court level and region.)
- Do you have any sense, according to your discussion with your colleagues about the structure and activity of organised crime? [(Probe their activity, recruiting process, membership (age, gender, relationship.), governing rules (code of honour, what customary norms.), frequency of power (cities, region, rural, urban.)
- What are some of the ways of cooperation between judges and politicians in terms of judicial corruption? (Probe by case type, court level and region, patterns of meetings, causes.) Probe it said that usually judiciary is stereotyped by the politicians; what are some of the technique they use to achieve that and have they succeeded? (Probe by court level and region.)
- Usually media claims that criminals are immune of prosecution because of judicial corruption; in your opinion what techniques does organised crime uses to neutralise judges and prosecutors? (Probe case type, court level and region.)

- Probe more specifically how do judges interplay with organised crime? (Probe by region and court level, senior and junior judges.)
- Probe in a time scale what have, in your opinion, been the most frequent neutralising techniques used by organised crime since 1989? And 1980? (Probe case type, court level and region.)

### **7-Role of Customary norms**

- What are some of the customary norms used to approach judges (litigants, prosecutors, colleague, advocates, OC)
- Probe patterns of OC
- Probe political elite
- (Probe by variations, case type, court level and region.)

### **8-Results and Obstacles to Reforms**

- What is the importance and role of judicial reforms in the development strategy of Albania?
- Probe what are some of the links between judicial reform, private and social sector development?
- Probe what is the likely result of judicial reforms in Albania?
- Probe what are the main obstacles?
- Probe who supports or opposes judicial reforms? (Probe by interest groups and potential risks.)
- Media claims that the community of judges is not asked for several key judicial reforms; do you agree with this statement?

# APPENDIX VI

## Interview Protocol

**Interviewee:** M.... K.....

**Date of Interview:** 25/04/2010

**Gender:** Female

**Education.** Post-communist judge

**Place:** his/her office (First Instance court of Tirana) **Time of Interview:** 10.30am

**Duration of Interview:** 60min

**Was the venue suitable?**

- Yes

**Does anything need to be changed for future interviews?**

Be prepared for delays

**How easy was it to establish rapport?**

- Easy: In general, she was open but tried to escape from the questions regarding the causes of corruption in the courts.

**Were there any problems and how can this be improved for next time?**

- Be aware for the time as they can give you only 30minutes.

**Did the interview schedule work well? Does it need to be altered or improved?**

- In general it worked well but I tried to avoid questions on the links of organized crime and political elite with the courts. She was not quite sure on the influencing patterns of organized crime. It should be mentioned though that she was dealing with civil and administrative cases and not with criminal cases.

**What were the main themes which arose in the interview?**

- Defective laws, the role of executive, the latter is obstructing the role of courts by not enforcing administrative decisions decided by the courts.

- To her this patterns was to circumvent the judiciary role or lack of judicial independence. The executive did not recognize the decision of courts or ignore it at best.

**Did any issues arise which need to be added to the interview schedule for next time?**

- Many defective laws after 2005
- Executive 'ignores' court decisions
- The evaluation system of judges

**Is the interviewee willing to be contacted again?**

Yes and she offered her help to find for me another judge for interview.

**A possible quote from participant:**

"Gjyqtari e fillon karrieren si gjeneral dhe e mbyll si tetar"

"Here in Albania we judges start our career with the enthusiasm of an army general and retire with the enthusiasm of a low rank officer"



## Notes during the Interview

### **A eshte gjyqsori i panvarur: (*Judicial Independence*)**

Ligjerisht po por jo praktikisht sepse me vendimet e gjykatave merret kushdo. Sapo nje vendim gjykate ne ceshtje sensitive del ne publik kushdo e ndjen vete gjykates per ta goditur. Pra gjyqsori eshte bere ne nje pre shume te lehte per tu anatemuar ne publik. Sidomos kur institucionet publike preken nga nje vendim gjykate.

### **Administrimi gjyqsorit: (*Administration*)**

Shume te pakenaqr me buxhetin qe i jepet gjykatave. Ai eshte shume l paket ne raport me ate qe gjykatat prodhojne. Psh ligji per taksta qe lidhet me pullen ne lidhje me gjykatat. Ligji me perparshem ka qene qe 1% e vleres se ceshtjes i takonte gjykates tani ky ligje eshte shfuqizuar dhe kjo ka bere qe packa qe gjykata punon kjo nuk demonstrohet ne te ardhura. Tani Ministri Financave ka vene nje cmim pulle shume minimal. Keshtu duke qene se gjykata merr 5% nga te ardhurat qe i jep shtetit kjo ka bere qe te ardhurat qe nxjerr te jene shume me te pakta. Ligjet ne pergjithesi jane shume difektoze. Ligjet organike e kane vendosur gjyqtarin ne nje pozicion shume te veshtire pasi gjyqtari mund te penalizohet per cdo gje.

### **Rekrutimi i Gjyqtareve (*Nomination*)**

Rekrutimi nuk bazohet ne meritokraci, aftesi profesionale apo eksperience. Gjyqtaret sot promovohen ne baze te njohjeve politike ose nese nje i aferm i tyre ka lidhje me politiken. Krahinizmi nuk duket se luan ndonje rol ne zgjedhjen e gjyqtarev. Mosha e emerimit te gjyqtareve duhet te jete me e larte sec eshte tani pasi kjo ndikon ne gjykimin e tyre. Kjo gjyqtare thote se me perpara ka dhene vendime edhe me 25 vjet heqje lirie por qe sot mbase nuk do ti jepte. Dhe kjo si rezultat i moshes.

### **Sistemi vleresimi te gjyqtarit. (*Evaluation process*)**

Eshte bere nje draft por eshte shume difektoz. Kjo nuk eshte ne vende as si Italia. Eshte ne Gjermani por ne nuk jemi sistem gjerman. Ne i ngjajme me shume atij Italianit. Ne Greqi po duan ta heqin.

### **Inspektimi (*Inspection*)**

Inspektoret jane gjyqtare por te cilet jane bere te tille vetem per te ardhur ne Tirane. Ajo qe te cudit eshte se ata inspektore aktiv ne goditjen e gjyqtareve (gjueti e shtrigave) jane shperblyer me poste te larta ne gjykata apeli. Por kjo nuk duket se eshte etike pra nje inspektor qe ka goditur gjyqtaret nuk mund te jete gjykates i Apelit apo gjykates se larte sepse kjo mund te sjelli konflikt interesi.

### **Infrastruktura (*Infrastructure*)**

Te pa kenaqur. Sot qe po merrej intervista kompiuteri ne zyren e gjyqtare nuk punonte. Gjyqtaret detyrohen ti kryejne seancat e gjykimit ne zyrat e tyre pasi kompiuteri ne sallat e gjyqit nuk punon dhe kjo detyron sekretaret te mbajne shenime me dore te cilat shpesh jane fare te pakptueshme. Sekretaret ne pergjithesi i mbajne shenimet me kompiuter por kjo sipas kerkeses se gjyqtarit. Ka gjyqtare qe preferojne qe ato te mbahen me dore pasi keshtu jane me te sigurta per tu fallsifikuar.

### **Siguria fizike (*Physical security*)**

Nga ana tjeter infrastruktura le shume per te deshirura si ne ceshtjen e solemnitetit por edhe ne sigurine e gjyqtarit. Ne gjykatën e Tiranës ka nje aparat kontrolli dhe polica sigurimi por kushdo kalon dhe nuk kontrollohet. Me e keqja eshte se aparati sinjalizon per metale dhe polici roje e sheh kete gje dhe nuk reagon.

### **Dynamics of Judicial independence**

Kryegjtari dhe kryeprokurori ishin anetar te plenumit. Per cdo vendim gjykate qofte edhe banal ata merrnin opinionin e organizates baze te partise ne lidhje me te pandheurit. Kjo edhe ne raste martesash. Aktualisht gjyqsori eshte shume me i panvarur dhe nuk ka ndikim politik. 'Ketu ne fakt gjyqtarja eshte pak konfuze sepse ne te gjitha ato qe thote per emerimin tregon se ka ndikim politika por si duket ajo ketu ka parasysh ndikime te drejtperdrejta, pra nje telefonoate apo nje mesazh nga eprori per nje ceshtje te caktuar'. Gjyqtarja shprehet se per sa ka ajo ne profesion qe prej 1988 ajo nuk ka pasur asnje rast te ndonje nderhyrje direkte politike pas 1990. Ajo qe goditet eshte vendimi i gjykates.

### **Transparenca (*Transparency*)**

Transparenca ne gjykatën e Tiranës eshte e plote. Cdo vendim i zbardhur pas 15 ditesh per ceshtjesh penale dhe 10 ditesh per civile (koha per ankimim) cohet per tu botuar online nga gjyqtari. Nese ajo nuk ndodh ky nuk eshte faji i gjyqtareve. Por gjykata te tjera nuk e kane kete lloj transparence dhe ketu kemi parasysh infrastrukturen elektronike. Skandaloze eshte qe dhe Gjykata e Apelit te Tiranës nuk e ka kete infrastrukture. Ne lidhje me mbrojtjen e te dhenave ne ato raste kur cmohet se ceshtja eshte sensitive seanca kryehte me dyer te mbyllura. Ka nje problem me gazetaret te cilet edhe per masa sigurie (gje e cila nuk tregon se dikush eshte i fajshem) bejne publikimin ne media duke cenuar imazhin e individit. Kjo sidomos me te miturit.

### **Korrupsioni (*Corruption*)**

Ka nje perceptim te gabuat per korrupsionin ne gjyqsor i cili shume shpesh vjen si rezultat i avokatit. Ky i fundit luan rolin e sekserit dhe kur humb ceshtjen ia ve fajin gjyqtarit duke thene se do duhej ti jepnim leke. Nese parashikon se e fiton ceshtjen i kerkon para klientit duke i thene se i ka dhene gjyqtarit. Por ne te vertete gjyqtari nuk di asgje. Nga ana tjeter percensioni eshte i gabuar edhe ne rastin e vendimit te drejte. Palet edhe nese vendimi eshte i drejte e paragjykojne. Shoqeria shqiptare vuan shume nga paragjykimet. "Gjyqsori eshte jetim" ..Nese egzekutivi ka nje kryeminister qe e mbron dhe paralemtaret kane foloret per tu mbrojtur gjyqtaret nuk kane. Cdo mos menazhim nga ana e qeverise i adresohet pa te drejte gjyqsorit. Ndikim i politikës eshte me i ndjeshem ne gjykatat e larta. Psh rasti i Kristaq Trajes ish gjyqtar i Strasburgut qe u refuzua nga Parlamenti tregon

kontrollin politik te gjykatave te larta. Mjafton te shohesh kush eshte anetar i gjykates se larte per ta kutpuar kete gje. Korrupsioni ne gjyqsor ka kapur kulmin ne vitet 1997-1998. Ka pasur nje renie me pas por ka filluar te rritet. Rreth viteve 1997-1998 kemi pasur djegje te dosjeve ne gjykata si e Shkodres psh qe eshte djegur dy here. Ndersa e Tiranes eshte permbytur. Kjo ka bere qe shume dosje te vjetra te kene humbur. Nje tjeter indikator tregues qe gjyqsori nuk eshte i panvarur eshte dhe Udhezimi i Keshillit te Ministrave per cregjistrimin e prones????? I cili eshte shfuqizuar nga Gj. Kushtetuese si jo kushtetues. Por ky vendim hyn ne fuqi vetem pasi botohet ne fletoren zyrtare dhe duke qene se nuk eshte botuar vazhdon qe Udhezimi i KM te jete ne fuqi. (Paradoks).Ligji per legalizimet shume i gabuar. Nga nje ane iu jepet pushtet ne menyre te paligjshme Kryeregjistruesit te cfuqizojë vendimet e gjykatave me udhezimin no. 1 te KM dhe nga ana tjeter behen legalizime vetem me firmen e atij qe ka zene pronen dhe kufitareve. Pra nje VKM del mbi ligjin dhe nje institucion shtetror mbi gjykatat.

### **Shkaktaret per korrupsionin (*Causes of Corruption*)**

Kushtet politike; Kushtet ekonomike—jo dhe aq. Rrogat e gjyqtareve jane me te lartat krahasuar me punonjesit e tjere te administrates civile. Ne pergjithesi per kete gje ankohen gjyqtaret e rinj te cilet duan te kapin standartet ekonomike shume shpejt; Edukimi nuk perben ndonje problem madhor sepse shkolla e magistratures po nxjerr studente te mire. Problem qendron tek mesusesit qe japin mesim aty; Pronat nje problem madhor per korrupsion; Kultura juridike, kemi kulture juridike por kemi shume ligje kontradiktore (paradoks)

### **Teknikat neutralizuese (*corruption techniques in general*)**

Perfaqesuesit e institucioneve te shtetit dhe avokati i shtetit pengojne punen e gjykates. Si?

Kerkojne shtyrje seancash pa fund

“Avokati i shtetit e koncepton veten si nje shkop ne rroten e gjykatesit”

Nje rast specifik eshte kur avokati i shtetit kerkon qe vendimi qe sipas ligjit lidhet me ceshtje mbi 20milion leke kerkon te jepet nga 3 gjyqtare. Kjo nuk eshte funksionale pasi eshte shume e veshtire te besh 3 gjyqtare pasi jane shume shume te ngarkuar. Kjo eshte te paragjykos gjyqtaret sidomos gjyqtaren relatuese.

Por avokati i shtetit edhe pse e di kete gje e ben per te justifikuar veten e tij.

### **Pengesa ne reforma (*Obstacles to judicial reforms*)**

Jane politike dhe ekonomike

Kemi shume reforma sepse kjo vjen edhe si rezultat i punes jo te mire te te huajve. “Na perdorin te huajt si kavie”. Te huajt nuk e njohin fare kontekstin shqiptar por vijne dhe flasin per gjera te cilat nuk i interesojne gjyqsorit praktikisht.

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